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State Trials

AND

PROCEEDINGS FOR HIGH TREASON AND OTHER CRIMES AND MISDEMEANORS

FROM THE

EARLIEST PERIOD TO THE YEAR 1783,

WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY

T. B. HOWELL, Esq. F.R.S. F.S.A.

AND

CONTINUED

FROM THE YEAR 1783 TO THE PRESENT TIME:

BY

THOMAS JONES HOWELL, Esq.

VOL. XXIII.

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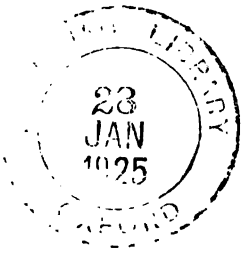
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587. Proceedings in the High Court of Justiciary at Edinburgh, against JAMES TYTLER, on an Indictment charging him with Sedition, January 7th: 33 GEORGE III. A. D. 1793.

Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis domo de Edinburgh, septimo die Januarii, millesimo septingentesimo et nonogesimo tertio, per honorabiles viros Robertum Mac Queen de Braxfield Dominum Justiciarium Clericum, Alexandrum Murray de Henderland, Davidem Rae de Eskgrove, Joannem Swinton, et Alexandrum Abercromby de Abercromby, Dominos Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

THE which day the diet of the criminal letters raised and pursued, at the instance of Robert Dundas, esq. of Arniston, his Majesty's Advocate for his Majesty's interest, against James Tytler, chemist, residing in King's Park, in the neighbourhood of Edinburgh and in the county of Edinburgh, being called; which criminal letters make mention, That albeit, by the laws of this and all other well governed realms, the wickedly and feloniously writing or printing, or causing to be written or printed, any seditious libel or writing; as also the wickedly and feloniously distributing and circulating any such seditious writing, or libel, when so printed; or the causing the same to be distributed and circulated among the inhabitants of a populous city, the metropolis of a country, are crimes of an heinous nature, dangerous to the public peace, and severely punishable; yet true it is, and of verity, that he the said James Tytler has presumed to commit, and is guilty of all and each or one or other of the foresaid crimes, actor or art and part: in so far as, upon one or other of the days of the month of November in this present year 1792, or of the month of October immediately preceding, or upon some other day in this present year to the public prosecutor unknown, the said James Tytler did, at Edinburgh, in the county of Edinburgh, or at some other place to the public prosecutor unknown, wickedly and feloniously compose and write, or cause to be composed or written a seditious libel or writing, addressed "To the People and their Friends," whereof the tenor follows:

"To the People and their Friends.

"A reform in Parliament being now universally talked of, it seems necessary for you to consider of the means by which that reform is to be accomplished, which means have not yet been seriously taken into consideration by any person, or number of persons, that I have heard of. It is said, that Mr. Pitt will perhaps bring in a reform; and I understand that this has been held forth to you by certain colonels and captains (perhaps I may mistake their titles), in whom I wish you to put no confidence. What right has Mr. Pitt to make the parliament good or bad as he pleases? Or what right have the parliament to lengthen or shorten the time of their own sitting? Will you still suffer yourselves to be duped, and to be made the tools of every one who thinks proper to assume the authority over you? I have been told, that those who would be your leaders, advise you to petition parliament. The proposal involves itself in contradiction. The parliament has already showed itself unworthy of confidence, and it has usurped a power to which it has no right. If the House of Commons is composed of the representatives of the people, these must be the servants of the people. Will you then be so absurd as to petition your own servants, or people who ought to be so? But the truth is, that the members of this house have become the masters not only of the people but of the king also. How many petitions have of late been presented to the house of commons, and how few to the king? As the Popish priests absorbed the worship due to the Deity by stocks and stones and

rascally saints, so have the house of commons artfully drawn away the attention of the people of Britain from the king to themselves. Those who advise you to petition the house of commons, insidiously and slily tell you, that these are your only just and lawful masters; yet these very persons will rail against the corruptions of the house of commons as much as any body; nay they are part of the house whom they desire you to petition; so that their advice ends in the very modest request that you would petition themselves! But, besides this absurdity, you must consider the house of commons as your enemies. They affect to consider themselves as the democratical part of the constitution. They are not; they are a vile junto of aristocrats. The majority of them are landholders; and every landholder is a despot in the most true and literal sense of the word. He can, directly or indirectly, extort from the country what he pleases: He can raise the price of provisions; he can turn people out of their possessions; he can drive them to the utmost ends of the earth; and, in short, turn the country, at least that part of it which he possesses, into a wilderness, if he pleases. It is this monstrous power of the landholders that you have to combat; and it is the want of something to balance this power, that is the true foundation of all the grievances you labour under. If you wish a remedy for the evils which you suffer, and are resolved to petition, surely you must petition the person who has it in his power to grant the remedy; and this is no other than the king, whom you seem entirely to have forgot. You cannot be ignorant that the king can dissolve parliaments, and call them together when he pleases. If you wish parliament to sit only three years, petition the king to dissolve it at that term; and, if he consents, you have your desire, at the same time that the parliament has no reason to complain. If you wish to have an equal representation, let those who are not represented petition the king: let them set forth, that they are oppressed and enslaved by an assembly of aristocrats, who call themselves the representatives of the people, but are not; let them request that the king will allow them to choose representatives for themselves; and that they may choose any person of good understanding and character to this office, though he should not be a landholder; nay let them make an exception, that these representatives shall not be landholders, and it will be so much the better. Let not the minister, or his spies, however, deceive you, by promising a reform, and admitting the inferior class of landholders as electors, or capable of being elected, as I am told he has offered. Thus you would be overwhelmed with an inundation of tyrants, and in a worse situation than you are. Let not money, or land, or houses, be thought to make a man fit for being an elector or representative; an honest and upright behaviour is the only qualification. Wealth has too long usurped the place and the rights of virtue; let virtue now resume its own power and dignity, to the exclusion of every thing else. Remember, that it was by an unwarrantable stretch of power, that the commons enlarged the duration of their own sitting. If they get this power sanctified by a petition from the national convention, it is precisely what they want: and instead of obtaining any reform, the chains of the nation will be rivetted." Which seditious libel or writing the said James Tytler delivered to William Turnbull, printer in Edinburgh, upon one or other of the days of the said month of October in this present year, or of the month of November following, and employed him to print the same; and he having accordingly done so, and thrown off five hundred copies, or thereby, thereof, which were delivered by him to the said James Tytler, on the 26th day of the said month of November, or some one or other of the days of that month, or of October preceding, or of December following, he the said James Tytler did, immediately thereafter, and upon one or other of the days of the said months, wickedly and feloniously distribute and circulate, or cause to be distributed and circulated, amongst the inhabitants of the city of Edinburgh and its suburbs, a considerable number of the said seditious libel or writing, so printed, as aforesaid, to the amount of two hundred and fifty, or thereby. And the said James Tytler, with the view, and for the purpose of inflaming still more the minds of the inhabitants of the said city of Edinburgh and its suburbs, inciting them to break the public peace, and of inspiring them with sentiments hostile to our happy constitution, and injurious to the peace and happiness of the inhabitants of this realm, did, within some few days after the so printing, publishing, and distributing and circulating of the said seditious libel, as aforesaid, compose and write, or cause to be composed and written, a wicked and seditious paragraph, of the following tenor:

"If the king do not hear you, our Magna Charta hath this for its basis, that the people need not pay any contributions towards the public exigencies of that country to which they do not belong; for it bears, that we must appear, either in person, or by our representatives, and calmly and deliberately put our hand, as it were, to our pocket, and pay what we please, or what is agreed to; and as this at present is not the case, but only with a small number, the rest of the nation are either slaves, or not of their community; and consequently not under their law, until such time, so to speak, as we be naturalised. This is the law of our Magna Charta: and as we are without the national bond, in this we are beyond their law, as by it we must have our voice in framing our laws, or they are none of ours; consequently, we may as timidly sub-

mit to laws imposed on us by the pope, as submit to laws imposed on us by such a junto. The conclusion is, if the king hear you not, keep your money in your pockets, and frame your own laws, and the minority must submit to the majority."

Which seditious writing or paragraph the said James Tytler did, upon one or other of the days of the said month of November, in this present year, or of October preceding, or December following, also deliver to the said William Turnbull, with directions to print the same on the back or second page of the aforesaid wicked and seditious libel, that had been so printed, as aforesaid; for which purpose, the said James Tytler returned to the said William Turnbull such of the copies of the said seditious libel or writing that had been printed as aforesaid, as had not before that time been distributed or circulated by him the said James Tytler, to the number of two hundred and fifty, or thereby; and the said William Turnbull having accordingly, in terms of the said directions, printed, or caused to be printed, the said wicked and seditious writing, or paragraph, on the back of the copies of the aforesaid seditious libel, that had been so returned to him for that purpose by the said James Tytler, he did thereafter deliver the whole of the same, or nearly so, to the said James Tytler: and he, the said James Tytler, did thereafter, on one or other of the days of the said month of November, or of October preceding, or December following, wickedly and feloniously distribute and circulate, or cause to be distributed and circulated, amongst the inhabitants of the said city of Edinburgh and suburbs thereof, the said seditious libel, originally printed and thrown off as aforesaid, with the addition of the said seditious paragraph so printed on the said second page of the same. And the said James Tytler having been apprehended on suspicion of being guilty of the said crimes, and carried before John Pringle, esq., sheriff-depute of the county of Edinburgh, he did in his presence emit and sign a declaration upon the 4th day of December 1792, which was likewise subscribed by the said John Pringle; and being to be used in evidence against the said James Tytler at his trial, will for that purpose, together with two printed papers, (the one which is marked No. 1. being one of the aforesaid seditious libels so first printed and circulated as aforesaid, and the other marked No. 2. being one of the aforesaid seditious libels to which a paragraph was afterwards added and printed on page 2nd thereof, and afterwards circulated as aforesaid, both also subscribed by the said James Tytler and the said John Pringle, esq. and other persons, be lodged in due time with the clerk of the high court of justiciary, before which the said James Tytler is to be tried, that he may have an opportunity of seeing the same. At least, times and places aforesaid, the said wicked and seditious libels or writings were written, printed, published, distributed, and circulated, as aforesaid, and the said James Tytler is guilty actor, or art and part thereof. All which, or part thereof, being found proven by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, the said James Tytler ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

And the said James Tytler having been often times called in court and three times at the door of the court house, he failed to appear to underlye the law for the crimes specified in the said criminal letters.

Whereupon his majesty's advocate moved, that sentence of fugitation and outlawry might be awarded against him; and as he understood bail had been given for the appearance of the said James Tytler when apprehended by the sheriff of Edinburgh, he craved that the bail bond might be forfeited, and the penalty recovered.

The lord justice clerk and lords commissioners of justiciary, decern and adjudge the said James Tytler to be an outlaw and fugitive from his majesty's laws, and ordain him to be put to his highness's horn, and all his moveable goods and gear to be escheat, and inbrought to his majesty's use, for his contempt and disobedience in not appearing this day and place, in the hour of cause, to have underlyen the law for the crimes of sedition and others specified in the said criminal letters raised against him thereanent, as he who was lawfully cited to that effect, and oftimes called in court, and three times at the door of the court house, and failing to appear as said is; and ordain the bond of caution granted by James Hunter and Robert Ross, booksellers in Edinburgh, for the appearaned of the said James Tytler, under the penalty of six hundred merks Scots to be forfeited, and the penalty therein contained to be recovered by the clerk of this court, to be disposed o as the Court shall direct.

(Signed) ROBERT M'QUEEN.
J. P. D.

588. Proceedings on the Trial of JOHN MORTON, JAMES ANDERSON, and MALCOLM CRAIG, on an Indictment charging them with Sedition. Tried before the High Court of Justiciary at Edinburgh, on the 8th, 9th, and 11th Days of January: 33 GEORGE III. A. D. 1793.*

Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis domo de Edinburgh, octavo die Januarii, millesimo septingentesimo et nonogesimo tertio, per honorabiles viros Robertum Mac Queen de Braxfield Dominum Justiciarium Clericum, Alexandrum Murray de Henderland, Davidem Rae de Eskgrove, Joannem Swinton de Swinton, Dominum Gulielmum Nairn de Dunsinan Baronetum et Alexandrum Abercromby de Abercromby, Dominos Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

Intran,

John Morton, apprentice to Stewart Ruthven and company, printers in Edinburgh.

James Anderson, journeyman printer with Mundell and Son, printers in Edinburgh; and

Malcolm Craig, also journeyman printer with the said Mundell and Son, printers in Edinburgh, Panels.

INDICTED and accused at the instance of Robert Dundas, esq. of Arniston, his majesty's advocate for his majesty's interest, for the crimes of sedition and others mentioned in the criminal libel raised against them thereanent, bearing, That where by the laws of this and of every other well governed realm, the uttering seditious speeches, tending to create a spirit of disloyalty and disaffection to the sovereign and to the established government; more especially when such discourse and speeches are addressed to persons in the military service of the country, whose peculiar province it is to protect the king and constitution as by law established, and uttered with a view to corrupt and withdraw them from their duty and allegiance to their sovereign and their country is a crime of an heinous nature, tending to the subversion of all order and government and severely punishable; yet true it is and of verity that the said John Morton, James Anderson, and Malcolm Craig, are all and each or one or other of them guilty actors or art and part† of the foresaid crime aggravated as aforesaid. In so far as the said persons above complained upon with others their associates did with a seditious and wicked design, in the evening of the 18th day of November of this present year 1792, or upon one or other of the days or nights of that month or of October preceding, come into the Castle of Edinburgh in the county of Edinburgh, and having gone into the room commonly called king James's room, in the lower canteen or sutlery of the said Castle, and having called for some liquor, they did then and there, all and each, or one or other of them, in the presence of Thomas Hume, corporal in the Grenadier Company of the 37th regiment of foot, and of Thomas Huxter, Alexander Stronach, and Michael Fish, soldiers in the said 37th regiment of foot, then garrisoned in the said castle, and some of whom had been purposely sent for to join their company, among other wicked and seditious speeches, propose or drink or cause to be drunk as a toast, "George the third and last, and damnation to all crowned heads"—or words of the same meaning and import; and they the said persons complained upon, did farther insist upon the said corporal and other soldiers aforesaid then present, to join with them in the said wicked and seditious toast; and they the said John Morton, James Anderson, and Malcolm Craig, or one or other of them, did at time and place foresaid seditiously and feloniously endeavour to raise discontent in the minds of the said corporal and soldiers, or of one or other of them, and to seduce them from their duty and allegiance to their sovereign and their country, by falsely and insidiously pretending that their pay was too small, and holding out to them the prospect of higher pay if they would join a certain description of men whom the said persons styled "The Friends of the People," or a "Club for Equality and Freedom." And the said John Morton having upon the 20th day of November 1792, been brought before John Pringle, esq. our sheriff depute of the shire of Edinburgh did emit and sign a declaration; and the said James Anderson having upon the said 20th day of November 1792, been brought before the said John Pringle, esq., did emit and sign a declaration; and the said Malcolm Craig having upon the said 20th day of November 1792 been brought before the said John Pringle, esq., did emit and sign a declaration; which three declarations above mentioned will be used in evidence against

* Compiled from the records of the court of justiciary, and the periodical publications of the time.

† As to this, see in this Collection the case of David Hackstoun, *ante*, Vol. x. p. 807, *note*.

the said John Morton, James Anderson, and Malcolm Craig respectively, and will for that purpose be lodged with the clerk of the high court of Justiciary before which they are to be tried that they may have an opportunity of seeing the same: at least, time and place above mentioned, the foresaid seditious speeches were uttered, and the said wicked attempts made to seduce the soldiers from their duty and allegiance, and the said persons above complained upon are all and each or one or other of them guilty actors or art and part of the said crime; all which or part thereof being found proven by the verdict of an assize before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary to be holden by them within the criminal court house of Edinburgh upon the 26th day of December instant, the said John Morton, James Anderson, and Malcolm Craig, ought to be punished with the pains of law to deter others from committing the like crimes in all time coming.

The libel being read over to the panels in open court, and they being severally interrogated thereon, they answered they were not guilty.

Pro'rs for the Prosecutor.—Robert Dundas, esq., of Arniston, his majesty's advocate [afterwards lord chief baron of the exchequer.]

Mr. *Robert Blair*, his majesty's solicitor-general [afterwards lord president of the court of session.]; and

Mr. *John Burnett*, advocate.

Agent, Mr. Hugh Warrender.

Pro'rs for the Panels.—Mr. Alexander Wight, advocate.

Mr. *David Williamson*, advocate; and

Mr. *James Fergusson*, advocate.

Agent, Mr. Hugh Robertson.

Mr. *Fergusson* for the panels, represented, that the crime here charged of uttering seditious speeches was one which had not occurred in this country as a subject of trial in the memory of any man living. That in former times it had often been prosecuted, but that those were times when the freedom of the subject was not so secure as now. That the words here used were ambiguous in their import, were mere *verba jactantia* uttered in convivial discourse without any wicked or seditious design, and that the statement in the minor proposition did not amount to the crime described in the major proposition; that with regard to the part of the libel which charges an attempt to seduce the military from their duty and allegiance, he contended that it appears that the panels had only expressed what many people may think, also, that the soldiers had too little pay, but that they did not thereby mean to seduce or corrupt them. That in this there was nothing more criminal than in saying that the stipends of the clergy were too small: that the panels had no intention to offer any thing hostile to the constitution; they have no connexion with any of the clubs or associations, and their going to the Castle was merely accidental, as will appear upon investigation; and if the libel should be found relevant, craved a proof at large in exculpation and alleviation. He also mentioned the inexpediency of bringing to trial a crime of this nature, of which there had been no recent example upon the records of court; and that it might be of dangerous consequence, to introduce as a precedent the trial of a crime of such difficult proof, and of so ambiguous a nature.

Mr. *Burnett* answered, that in this case perhaps, more than in any other, there was the greatest room for the question of intention. That no doubt words of the most seditious tendency might be uttered without any view to stir up sedition, but from mere rashness and folly. The intention however must be judged of from the whole circumstances attending the case, from the occasion and time when, the place where, and the persons to whom such speeches are uttered: that the whole circumstances appearing from the face of the libel joined to the obvious meaning of the words themselves, exclude every presumption of any thing else, than a wicked and seditious design; and therefore the statement in the minor proposition is fully tantamount to the crime charged in the major. The panels are printers conversant in the meaning of words; they must know that in an established government, every act to disturb that government is highly criminal at common law. There could, therefore, he contended, remain no doubt of the relevancy of the charge now brought: and he did not oppose a proof at large in exculpation or alleviation.

The *Lord Advocate* after complimenting the counsel for the panels, for the very able manner in which he had expressed himself, said, that he considered it as in a peculiar manner his duty, to advert to what had been stated with regard to the inexpediency of bringing this offence to trial. His lordship said that the conduct of those in the situation which he held, with respect to the bringing to trial offences of this nature, must be regulated in a great measure by the existing circumstances of the country. That what at one time would be considered as an act of mere folly and rashness, and as having no seditious tendency, is, at another, and at a different conjuncture, an act of a more mischievous and serious nature. That at the time when the words and speeches were utterred, that are stated in this charge, the country was in a very alarming situation indeed: principles had been openly and avowedly published, that were hostile not only to that happy constitution under which we live, but subversive of all order, and of every esta-

†

blished government. That persons who on such an occasion, and at such a conjuncture, expressed themselves in the manner in which it is stated these panels did, could have been actuated by nothing else than a most wicked and seditious purpose, with a view to stir up that spirit of popular insurrection, and to produce those scenes of riot and anarchy, which had been so dismally experienced by the inhabitants of a neighbouring country. That when attempts were thus made to subvert the constitution, and so violent an outrage committed on the law of the country, he thought it the duty of every good and peaceable subject to endeavour to counteract them; and more particularly the duty of the public prosecutor to bring those persons to trial, who had been in any shape accessory to the commission of such outrages. That as he all along considered the conduct of the panels in that light, and that they had been actuated with a seditious intention at the time, he conceived, that he would have failed egregiously in his duty to the public, if he had not brought them to trial. With respect to the relevancy of the indictment, his lordship did not conceive, that there could be the least room to doubt, that from the whole circumstances as appearing upon the face of the indictment, joined to the obvious purport of the words said to have been uttered, a crime of a very aggravated nature had been committed, and which well deserved the most serious attention both of the Court and jury.

Their lordships then severally delivered their opinions.

Lord *Henderland*.—My lords; I am extremely sorry to see three young men, industriously brought up to a useful profession, placed at your lordships bar as panels. I am bound, in this stage of the business, to presume they are innocent, and humanity induces me to wish they may be found so; but that is not the question before us; our present province is, by examining the indictment to determine how far a crime is properly charged in what is called the major proposition, and, if so, whether the facts stated in the minor, amount to that crime, and are relevant to infer punishment?

The indictment charges, in the major proposition, that the uttering seditious speeches, tending to create a spirit of disaffection and disloyalty, especially among soldiers, and with a view to withdraw them from their duty, is a crime. Who can doubt it? The pannel's counsel admit it is so. The facts stated in the minor proposition are in substance, That the pannels having sent for certain soldiers, garrisoned in the Castle of Edinburgh, to their company, did propose to drink, drink, or cause to be drunk, in their presence, as a toast, "George the third and last, and damnation to all crowned heads." What was this, but ouvertly expressing a most wicked and flagitious wish that our gracious sovereign, under whose mild and auspicious sway, this nation has arrived at a pitch of prosperity unenjoyed and envied by most of the other parts of Europe, should be damned?—a wish, that in his person a period might be put to that happy constitution, by which our lives, our liberties, and our properties, have been protected and secured! It was admitted to be most flagitious, but it seemed to be denied that of itself it was a crime tryable in this court. In my opinion, it is of itself a crime well meriting the cognizance of this high court, and to be tried by the most respectable jury of this realm. Openly to avow a desire to overturn the constitution; an impious wish that our beneficent sovereign, distinguished by private and public virtues; his sacred majesty, the father of his people, would be damned!—What can be more criminal? But this is not the crime meant to be here charged, for these words, in the indictment, are coupled as follows; and they, the said persons, did further insist that said soldiers should join them in said toast. Was not this very act an attempt to withdraw the soldiers from their duty and allegiance, and thereby to break their military oaths and engagements?

The indictment farther proceeds—That the panels did seditiously and feloniously endeavour to raise discontents in the minds of the said soldiers, and to seduce them from their duty, by pretending their pay was too small, and holding out to them the prospect of higher pay, if they would join persons of a description therein named. What means of seduction could be employed apparently more effectual? It was said that the persons or clubs mentioned in the indictment, held and avowed principles favourable to government and to the constitution. I can know nothing of these clubs in this place; I like not their names. The Friends of the People, and a Club for Equality and Freedom! What occasion for such associations, with such names? Are not the people protected in the enjoyment of their constitutional rights, and in reaping the fruits of their industry? A club for equality and freedom! Freedom is a name we all revere, and we enjoy it; but if, by equality, be meant an equal division of property, it would be a downright robbery to introduce it! To say that all men have equal rights when born, is a proposition from whence no consequence can be drawn. Or to maintain that all men are equal, is neither founded in truth nor nature—scarce two children are born precisely alike. Among men we differ in the simplest powers of the body. Few men possess the ability of walking in such perfection as the celebrated pedestrian. Has every man abilities, natural or acquired, to qualify him for a minister of state? Or does the extensive knowledge of trade and commerce, which so eminently distinguish a Hope of Amsterdam, and even some of our fellow citizens here, who have, much to their own honour and country's advantage, ac-

quired large fortunes in the same way, belong to all men? To reduce them in point of wealth and riches to a common level would be an unprincipled and nefarious robbery. Every man has a right to acquire wealth and riches, but it must be by the same or equally lawful means. But suppose the object of such societies to be no more than to announce the above unconsequential proposition; or that their principles are favourable to order and government; that they mean to support the constitution.—Be it so.—What then? In every nation, among every people, which can deserve the name of a state, there must be different departments, different powers of state, of public civil dominion, which are distinct, by whomsoever exercised, out of which different relations and duties arise. Internal controversies produce the judicial power; wrongs from without, the fecial; the necessity of general rules of conduct, the legislative; of a public revenue and property, the fiscal; and the public force necessary to carry into effect the determinations of all the others, with the regulations belonging to it, constitutes that branch of public civil dominion, which is called military magistracy; it matters not of how many parts it consists, or in what form it be employed, whether it be called the king's host, as formerly with us, consisting of military vassals, a *posse comitatus*, a militia, or a standing army raised under the authority of parliament.

All these different departments or powers, exercised by one or many, have their separate duties and dependances: and by that common law which arises from the constitution of government itself, a transgression or an attempt to bring about a transgression of these must be punishable. It may depend, deed, upon circumstances, before what court. The military, when raised, are under the command of the king, and of the officers set over them by his majesty. To withdraw, or to attempt to withdraw soldiers from such constitutional dependance and discipline, and place them under any other influence or authority whatever, must be a crime, and of course punishable; and if made by one not under military command, may be tried and punished in this high court.

It was said, in the way of defence, without admitting the truth of the charge, That the attempt must have been unpremeditated—the whole affair accidental—that the panels must have been drunk—or it must have proceeded from levity. To constitute murder, it is not necessary that the slaughter should have been long premeditated. If the act be committed, intention and a design must be presumed, unless such circumstances of accident could be established as rendered the slayer an involuntary agent; such, for instance, as the head of an axe flying off, and killing a man. No such circumstance could occur here.—Drunkenness could be no alleviation— were it, the greatest criminals would escape.* How many instances have we of men getting drunk to embolden them to commit crimes? Levity can be no excuse. The proverbial wisdom of this country teaches, "it is dangerous to play with edged tools." Most crimes discover want of consideration—all want of just reasoning and sound judgment. I shall be happy if the jury can find any ground consistent with their oath, and with their duty to their country, upon which the panels may be acquitted. In the mean time it is mine to say, that the above defences hinted at by the panels' counsel, ought not in law to avail them, and that your lordships will pronounce an interlocutor finding th indictment relevant.

Lord *Eskgrove* considered the crimes charged in the indictment as of a very dangerous nature and tendency; and he entirely concurred in the opinion which had been given.

Lord *Swinton*.—My lords; the question now before the court is not, Whether the prisoners are guilty of the crimes laid to their charge? for that is the province of the jury. Neither is it the heinousness of the crime, charged in the general proposition of the indictment; for that is admitted. But the present question is singly, Whether the particular articles in the charge amount to the crime laid in the general proposition; and whether relevant to infer the pains of law; so that issue may be joined upon them, and sent to a jury, upon the plea of not guilty? This question has, however, been treated so properly and so fully by such of your lordships as have already delivered your opinions, that I can only tread in their footsteps, and shall therefore use few words.

The essence and criminality of the charge depend entirely upon the intent of the words spoken by the prisoners, and their behaviour accompanying these words. So the question is, whether the articles charged infer a felonious and criminal intent.

Though the prisoners have pled not guilty in general, yet their counsel have laid in for a special defence, by explaining, that though some of the words had really been spoken, yet, loose expressions in the warmth of conviviality ought not to be laid hold of, as importing any thing serious or criminal. Whether that construction can be put upon them, or whether liquor and conviviality brought out the sentiments that were uppermost (as *in vino veritas*) would depend on the proof which was not *hujus loci*; we were now only to consider whether the charge is relevantly laid. This would best appear by considering the tenor of the indictment.

First, It is charged, that they sent for some of the soldiers to join their company, to drink with them.

* See Vol. XXII. of this Collection, p. 520, *note*, and the authorities there referred to.

This is a clear charge of intent. What had they to do with the soldiers, if they were not of their acquaintance?

2dly, They proposed to them to drink a toast, which, if not importing even a treasonable intent, certainly imported a most seditious and wicked wish, against our most gracious and beloved sovereign, a sovereign not only exemplary to monarchs, but to private men; a wish "that he might be the last of his race," and at the same time adding "Damnation to all crowned heads." Can such a wish be called the loose and thoughtless expression of juvenile conviviality? or does it not rather import a seditious speech, intending to inspire disloyal sentiments into the minds of the soldiers?

3dly, But the charge does not rest here,—interest is the serious argument with mankind, especially of the lower rank: the charge states, that this was not overlooked. The prisoners tell the soldiers their pay was too small—what is sixpence a day to a soldier? You shall have higher pay if you will join with the friends of the people, or a club for equality and freedom? Friends of the people! What are friends of the people? Are the people friendless? The people, who are they?—No doubt the common people—Is not this a clear innuendo, that the common people are friendless, have no friends but this club? that they are oppressed; and joining this with the toast and the damnation, what is the inuendo? And who is held out as the oppressor?

Then this club for equality.—'Tis a general equality! The absurdity and impossibility of such an equality have been already described. The club for freedom too! as if we were not free, as if we needed this club to assert our freedom. Is there one here present who can name a time when this nation had ever more freedom than now; had more security for life, liberty, and property, than at this moment, or indeed so much? The state of the present times, both at home and abroad, is the strong ingredient to make the intent serious and manifest. I am, therefore, clear upon the whole, that the particular articles amount to the crime stated in the general charge, viz. seditious speeches, tending to create disloyalty and disaffection to his majesty, and to the established government, and an attempt to corrupt and seduce the military from their duty; and, therefore I concur in the interlocutor upon the relevancy that has been proposed.

Lord *Abercromby* observed, that the words as stated in the indictment, stripped of every other circumstance, were in themselves highly wicked and seditious; and, that had the pannels gone a little farther, they would have been guilty of high treason.

His lordship then adverted to the numerous seditious meetings and associations in different parts of the country, and to the means that had been every where so industriously employed by the members of such associations to produce effects similar to what had taken place in a neighbouring kingdom—effects which his lordship characterized as the most oppressive despotism. That when such attempts were made, he thought it the indispensable duty of his majesty's advocate to bring to trial every person who had been guilty of such seditious practices; and he considered the conduct of the panels, as appearing from the statement in the libel, as of a very aggravated and seditious nature.

The *Lord Justice Clerk*, after expressing his entire concurrence in the sentiments delivered by all of their lordships, observed, that it was no good defence to say, that the words here spoken were mere *verba jactantia*. They were obviously of a most wicked and seditious import; and no plea of rashness, wantonness, or conviviality could be admitted as an excuse. His lordship illustrated this by referring to the horrid crime of blasphemy, where, though the words uttered could be nothing else than mad or foolish in the extreme, still they were impious and wicked, and might, in certain circumstances be cognizable, and severely punishable by a criminal court.

The Court then pronounced the following

INTERLOCUTOR.

The lord justice clerk, and lords commissioners of justiciary, having considered the criminal libel, raised and pursued at the instance of his majesty's advocate, for his majesty's interest, against John Morton, James Anderson, and Malcolm Craig, panels, with the foregoing debate. They find the libel relevant to infer the pains of law; but allow the panels, and each of them to prove all facts and circumstances that may tend to exculpate them, or alleviate their guilt; and remit the panels with the libel, as found relevant, to the knowledge of an assize.

(Signed) ROBT. M'QUEEN, J. P. D.

The following persons were then named, to pass upon the assize of the panels.

William Lamb, upholsterer in Edinburgh.
David Thomson, merchant there.
Thomas Brown, merchant there.
Alexander Laidlaw, tin-plate worker there.
Andrew Boog, cutler there.
James Ranken, wright, there.
Orlando Hart, shoe-maker there.
John Fairbairn, bookseller there.
James Dewar, cloth-merchant there.
Peter Hill, bookseller there.
David Ramsay, printer there.
John Bell, bookseller there.
James Hunter, merchant there.
Thomas Reid, watch-maker there.
Alexander Anderson, merchant there.

Who were all lawfully sworn, and no objection on the contrary.

The procurators for the prosecutor, for proof of the libel, proceeded to adduce the following witnesses, who, being all lawfully

sworn, purged of malice and partial counsel, emitted their depositions *viva voce*, in presence of the Court and Jury, without being reduced into writing, in terms of the statute.

1st, *Thomas Hume*, corporal in the grenadier company of the 37th regiment of foot, deposed, That, on Sunday, the 18th November last, when sitting in the canteen, a soldier of the name of Huxter called him, and said, there were some persons in king James's room (this room is on the opposite side of the canteen) who wanted to see him: That he accordingly went there, where he saw eight persons, among whom were the prisoners: That Anderson immediately arose, and taking him by the hand, said, 'You are a clever 'fellow, and ought to join our club for free-'dom and liberty.' Upon this he took some silver from his pocket, and holding it out to him, said, 'Your pay is very small—6*d.* a-'day—what is that! Were you to join us 'you would have 1*s.* 6*d.* a-day.' That at this time they were drinking, and Anderson proposed as a toast, 'George the third and last, 'and damnation to all crowned heads:' That the others also joined in this, but he, the corporal, refused, and drank 'Success to George '3d, and all the royal family.' Upon this Anderson made a blow at him, which he returned, and then went out of the room to Captain Cameron, the senior officer then in garrison, whom he informed of what had happened: That Captain Cameron desired him to order the barrier-guard to let no person go out of the garrison without his express orders. Having done so, he returned to the canteen, at which time the panels, along with the other persons who were in their company, were coming through the square, when one, but he could not say which of them, cried, Damn the King and the Castle too.

2nd, *Thomas Smith*, drummer in the 37th regiment of foot.

3rd, *Alexander Strohach*, soldier in the 37th regiment.

4th, *Michael Fish*, soldier in the 37th regiment of foot.

5th, *James Lawson*, soldier in the 37th regiment of foot.

6th, *James Erwin*, soldier in the 37th regiment of foot.

7th, Captain *Alexander Cameron*, of the said 37th regiment of foot.

8th, *James Girvane*, journeyman hairdresser in Edinburgh.

9th, *George Knowles*, journeyman hairdresser in Edinburgh.

It having been observed by the Court, that said George Knowles, the last witness, had been guilty of gross prevarication upon oath; therefore the said lords grant warrant to and ordain any of the macers of court, to apprehend the said George Knowles, and to commit him prisoner to the Tolbooth of Edinburgh, therein to be detained till Tuesday, the 22d day of January instant, and then to be set at liberty.

(Signed) Robt. M'Queen, J. P. D.

10th, *Alexander Rentoul*, keeper of the Lower Canteen, in the Castle of Edinburgh.*

The prosecutor being then about to adduce witnesses for proving the declarations, the panels judicially admit that the declarations libelled on, were emitted by them respectively, voluntarily and freely, of the dates they bear, and that they were at the time sober, and in their sound senses.

(Signed) *James Anderson.*
John Morton.
Malcolm Craig.
Robt. M'Queen, J. P. D.

The declarations being then read over in open court, his majesty's advocate declared that he closed his evidence.

On the part of the panels, several witnesses were called, some of whom said, they did not recollect such toasts being drunk. Their evidence also went strongly to prove, that the panels had no bad intention when they went to the Castle; and it was pretty clearly established, that one part of the company went for the purpose of seeing a young girl, and to present her with a breast-pin. The girl's evidence was to this effect. The other part of the company accounted for their going to the Castle by showing, that it was in order to gratify their curiosity to see king James's room. They also brought witnesses to prove, that they belonged to none of the societies called the Friends of the People, and that their characters were unimpeachable.†

The following were the witnesses in exculpation.

1st, *William Grierson*, apprentice to Mr. James M'Kenzie, goldsmith in Edinburgh.

2nd, *Robert Thomson*, brush-maker, at the brush manufactory in Edinburgh, carried on by the representatives of the deceased William Muirhead, brushmaker in Edinburgh.

3rd, *Thomas Huxter*, soldier in the 37th regiment of foot.

4th, *Janet M'Farlane*, servant to ensign Frederick Rudolph Bruce, of the invalid company, in the Castle of Edinburgh.

5th, *Catharine Loudown*, alias *Knowles*, wife of George Knowles, journeyman hairdresser in Edinburgh.

6th, *Francis Rae*, journeyman printer, in the office of said Mundell and Son.

7th, *James Scrymgeour*, apprentice to the said Mundell and Son.

* The above nine witnesses corroborated the evidence of Hume; but I have not been able to procure any account of their testimony.

† Of the evidence adduced on behalf of the panels, I regret that I have not been able to procure a better account than the above.

8th, *Alexander Carfrae*, journeyman printer, in the office of Stewart, Ruthven, and company, printers in Edinburgh.

9th, *Robert Burns*, journeyman printer, in the office of the said Mundell and Son.

10th, *Thomas Russell*, foreman in the office of the said Mundell and Son.

11th, *Charles Stott*, journeyman printer, in Edinburgh.

12th, *Archibald Tod*, foreman in the office of Stewart Ruthven, and company, printers in Edinburgh.

13th, *Adam Dowie*, printer in the office of Murray and Cochran, printers in Edinburgh.

14th, *James Ruthven*, printer in Edinburgh.

15th, *Thomas Laurie*, apprentice to Stewart Ruthven, and company, printers in Edinburgh.

The procurators for the panels thereupon declared, that they closed their evidence in exculpation.

The *Lord Advocate*, in a very eloquent and impressive manner summed up the evidence on the part of the Crown.

In the course of his speech, his lordship took occasion to observe, 'That with respect 'to the association denominated the Friends 'of the People, he found no fault with the 'name. He, as his fathers before him, 'always did, and would profess himself a 'Friend of the People, but that friendship 'could only be through the medium of the 'law and the constitution; that in any other 'way, the real interests and happiness of the 'people never could be promoted; and that 'any other person, who, by any other means, 'pretended to benefit the people, was, in 'place of being their friend, their greatest 'enemy.'

Mr. *Wight* next addressed the Jury with much ability and ingenuity on the part of the panels, and stated every argument to take off the force of the evidence. He admitted that the crime charged was of a very aggravated and heinous nature; that he was no friend to those associations denominated the Friends of the People; that with regard to Paine's book, he never had read, nor ever would read it, as he understood the doctrines were equally absurd as seditious. He then went into the merits of the proof, and endeavoured to show, that the panels could have had no serious intention to create any sedition, from the circumstances attending their conduct all along; and that the evidence adduced on the part of the prosecutor was in several respects defective.

The *Lord Justice Clerk* charged the jury, and stated with great accuracy and ability, the substance of the whole of the evidence that had been adduced on both sides.

The assize were then ordained to enclose, and return their verdict next day at 11 o'clock.

Wednesday, 9th January, 1793.

Intran,

John Morton, apprentice to Stewart Ruthven and company, printers in Edinburgh.

James Anderson, journeyman printer with Mundell and Son, printers in Edinburgh; and

Malcolm Craig, also journeyman printer with the said Mundell and Son, printers in Edinburgh—Panels.

Indicted and accused as in the preceding sederunts.

The persons who passed upon the assize of the panels, returned the following verdict:

At Edinburgh, the 8th day of January, 1793.

The above assize having inclosed, made choice of the said Orlando Hart to be their chancellor, and of the said David Thomson to be their clerk; and having considered the criminal libel raised and pursued at the instance of his majesty's advocate for his majesty's interest against John Morton, James Anderson, and Malcolm Craig, panels, the interlocutor of relevancy pronounced thereon by the Court, the evidence adduced in proof of the indictment, and evidence adduced in exculpation; they all in one voice find the libel proven. In witness whereof their said chancellor and clerk have subscribed these presents, consisting of this and the preceding page, in their names and by their appointment, place and date foresaid.

(Signed) Orlando Hart, chancellor.
David Thomson, clerk.

The lord justice clerk and lords commissioners of justiciary, supersede consideration of the foregoing verdict till Friday next at eleven o'clock forenoon.

Friday, 11th January, 1793.

Intran,

John Morton, James Anderson, and Malcolm Craig, before designed.

Indicted and accused as in preceding sederunts.

The verdict of Assize having been read over,

The *Lord Justice Clerk* mentioned, that last night he had received a letter subscribed by the prisoners, which, though addressed to him, was in fact addressed to the Court at large. He therefore desired the clerk to read it as follows:

My Lord Justice Clerk;—It is with a good deal of concern we trouble your lordship upon this occasion; trusting, however, to your well known candour and love of justice, mixed with mercy, we beg to state to your lordship, and to the other honourable judges, our present hard fate; and we hope, upon an impartial and fair consideration of our case, you will be inclined to pass a judgment as lenient as may be consistent with justice and public

utility. We do not pretend, my lord, to justify ourselves in our conduct, we know it has been foolish, and we hope what we have already suffered on account of it, will have a great effect on our future conduct. The verdict of a jury of our fellow-citizens, has, no doubt, come out against us: this we with chearfulness submit to, as being the effect of an institution the most valuable we enjoy as British subjects; an institution which, as well as all the other parts of our excellent constitution, we hope ever to venerate and support. Nothing, my lord, could have been more distressing than being arraigned at your bar for any disaffection to our sovereign, or the constitution of the country.—We have uniformly professed our attachment to the present constitution; and, as appeared pretty evident from the proof led at your bar, and which we solemnly declare to be the fact, are connected with no club or society of Friends of the People, or any for reform. We have, my lord, great reason to reflect on the folly of going to the Castle on the unfortunate day that has been the cause of so much trouble to the high court of justiciary, and the gentlemen of the jury, as well as vexation to ourselves, and an expense and loss of time that we are very unable to support.—We however declare, in the most solemn manner, and we hope it was established satisfactorily by the proof, that there was no intention on our parts, of the crimes laid to our charge.—That words might have been used among us very improper, considering the situation of the country and the place, we will not deny. Our former imprisonment, and the expenses incurred, has been already no small punishment on us: this, when considered in a cool and deliberate way, will, we hope, tend to influence your lordships in giving judgment. We are young men, beginning the world, have been formerly guilty of no transgression against the laws of our country; are proven to have been hitherto of most unexceptionable characters. We therefore hope, that all circumstances considered, the purposes of justice, as well as public utility, may be served by a slight punishment.

We feel much for ourselves, and the feelings of our aged parents and connexions would be truly distressing should any ignominious punishment be inflicted: we confess we have been guilty of a piece of gross folly, and flatter ourselves that your lordship will be sensible, that the situation of the country, makes it more criminal than it would otherwise have appeared.

Trusting, therefore, to your lordship for all the lenity consisting with propriety, we are,

Your lordship's most devoted,
And very humble servants,

(Signed) JAMES ANDERSON,
MALCOLM CRAIG,
JOHN MORTON.

Tolbooth, Jan. 10 1793.

P. S. Our bail-bond was of small amount, yet we did not fly our country, but voluntarily delivered ourselves before your bar, yesterday morning. Before we appeared, we knew, from the intimation of our friends, that the jury had found us guilty; yet we, trusting to the mercy of the Court, stood forward accordingly.

Addressed,—*The Right Hon. the Lord Justice Clerk.*

After the letter was read, their lordships proceeded to deliver their opinions with regard to the punishment to be inflicted.

Lord *Henderland.* My lords;—we are now arrived at the most disagreeable and distressing part of our duty, to pronounce sentence upon these three young men, panels at the bar, against whom the charge contained in the indictment has been found proven by a verdict of their country.

They have had a fair trial; and in addition to what your lordship was pleased to take notice of on the conduct of their counsel, Mr. Wight, I will beg leave to say, that I never heard a more able or a more proper charge made to any jury in behalf of a criminal. Nothing was omitted that could aid them; every argument was forcibly, and with becoming boldness, urged, that could weaken the force, or remove the effect of the proofs brought against them; every circumstance—the slightest—laid hold of to render it improbable, or alleviate their guilt; but with a dignity that became his high rank at the bar,—with an indignation that suited his situation as a respectable citizen, he exposed and refuted the fallacy and fatal consequences of those dogmas which have been published, or are supposed to have gone abroad, which might tend to overturn our happy constitution, or shake our allegiance to our sovereign. In short, he has displayed the powers of an able advocate, combined with the duty of a loyal subject.

After all, the crime has been found proven; —a crime it is of most dangerous tendency: —in the letter now read, the panels have acknowledged the justice done by the respectable jury; they have expressed contrition for their guilt; they deprecate punishment.—In certain circumstances and directed to certain objects, I can have no doubt that even an attempt to excite mutiny or sedition among soldiers, may be punishable with death. It was so by the Roman law [*l. 1. ff. ad Leg. Jul. Maj.*]. It was so by the laws of many nations in Europe. By the 12th of queen Anne [*Bruce's Military Law, tit. 9, p. 44*], simple mutiny was made punishable by an arbitrary punishment; but by an act in 1715, it was again made punishable with death. Mutiny, or an attempt to raise it, amounting to treason, may still be punishable as such. It is worth while to take notice, that Bruce, in giving an account, of the Mutiny Act of queen Anne, as to soldiers be-

yond seas, says, "Nay, whosoever hears any 'mutinous or seditious words spoken, and 'does not, with all possible speed, reveal the 'same to his commanding officer, is punish-'able with death.' And, by the present Mutiny Act, concealment of it is punishable in the same way. Seditious persons, then,—I mean flagitious and detestable men, meaning to undermine the constitution,—had need to beware how they attempt the soldiery of this country, steeled as they are by the love of the constitution, and their loyalty to their prince, and whose conduct is guaranteed by such severe function.

This author, who published so far back as 1717, and whose works are of great authority, and much resorted to by us in all general questions of this kind, proceeds in a passage which I will take the liberty to read to your lordships;—'By the foresaid British articles, 'all officers and soldiers are strictly prohi-'bited not to use any traitorous words against 'the sacred person of his or her majesty, 'upon pain of death;—and according to the 'Dutch instructions, all cursing and reviling 'the states general, the council of state, or 'governors of provinces, is in the same man-'ner punishable' [269, 270].—Here are the enactments of a republic on this subject; and what is still more remarkable, by the regulations of this very republic, article 7, 'all 'such as keep night conventicles or nightly 'meetings, &c. are made punishable as muti-'neers,' [*Bruce's Military Law*, p. 268]. What shall we then say of inviting soldiers to modern and seditious associations?—But permit me to proceed in reading our author, in the above place as applicable to all: 'And indeed,' says he 'such expressions are fitly compared to the 'cutting of a razor,' (Psalm lviii. 8.); so hence it is that Solomon most sagely enjoins (Eccles. x. *ult.*), 'to forbear cursing the king even in 'our thoughts;' for sure there is not a more evident demonstration of a malevolent disposition of mind against prince or state, than such reviling traitorous expressions.—The traducing a government being, we know, the prelude to the casting it off; mutinous and seditious words the forlorn hope to rebellion. And though out of an affected ceremony, the Roman emperors Arcadius and Honorius refused to punish intemperate speeches, because, say they, 'Si inde levitate processerint, 'contemnendum est; si ex insaniâ, misera-'tione dignissimum; si ob injuriâ, remitten-dum,'"—a text quoted by the ingenious gentleman who elegantly and ably opened the panel's defence,—"yet it is obvious," proceeds our author "to any who have looked into the lives of these two princes, that this idle and unseasonable clemency turned to a very sad account to *them*, they having run more risk of forfeiting both their crown and lives by the mutinies and rebellions than any other of all the Roman emperors."

I ask pardon, my lords, for this digression. I have been led into it by the novelty of the case, and the singular situation of the times. To avoid it in future, I shall say nothing of these illegal associations that have been formed, and of the foolish or nefarious tenets that have been sent abroad. But I am bound to take notice, that his majesty, by his royal proclamation, has called upon us, in common with the other citizens, to watch over that spirit of sedition which has been disseminated by evil-designed and traitorous men within the kingdom, and fomented by foreign enemies from without; a measure which all men must admit to have been cautious and salutary,—which frequent publications, and appearances avowedly hostile to the constitution—which the records of this court by different proceedings within these few days, establish to have been wise and just:—and we are called upon, I say, by that just recommendation of duty, whilst we pronounce a sentence strictly agreeable to law,—the only rule of our conduct,—to apply it so as to answer the purpose so laudably brought under our view. In the present instance, however, the crime during the whole trial having been considered only as the object of arbitrary punishment, our choice must be much narrowed.

We can only choose one of three punishments;—either transportation to Botany-bay,—banishment for sedition to England is out of the question,—corporal punishment by whipping and imprisonment, or imprisonment alone. Were the panels aged and inveterate offenders, whom there were little hopes to reclaim,—be they of what profession they may, the more literary the fitter for such punishment,—I should have had no scruple to deprive them of the enjoyment of this happy constitution, against which they had offended, and obliged them, by hard labour in an infant colony to repair, in some measure, the injury they had done here. But it is a rule which a criminal judge ought ever to have in view, 'Exemplar cum 'severitate, personam cum misericordiâ, in-'tuendam;' to regard the crime with due severity, to look on the criminal's person with an eye of pity and commiseration. I cannot, therefore, leave personal considerations out of view. The panels are young; their habits have been industrious, their former character peaceful. However on this occasion infected by bad example, or seized with political criminality, they have expressed their contrition, they may be reclaimed. I cannot, therefore, propose sending them to Botany-bay. To punish them by whipping abandons them to despair, and disgraces their parents: one of them is a respectable citizen:—My mind revolts at a punishment which banishes shame, and thereby precludes amendment; unless the subject be perfectly depraved, or the severity indispensably necessary. Wishing, in this part of my duty, to follow the example and embrace the sentiments of our gracious sovereign, who ever tempers justice with mercy, I wish to adopt the punishment of imprisonment alone.

Long imprisonments are usual in our neighbouring country; their accommodations for it are great:—they are not usual here. Had there been, as there ought to have been, a prison in the Castle of Edinburgh, where these young men might have been kept, untainted by other vice, I should have been for a longer imprisonment. But to throw them into the Tolbooth of Edinburgh for a very long time; to make them denizens, as it were, of that unhallowed place, which is the sink of corruption,—where every thing that is vicious, base, and criminal are huddled together,—where, if they preserve their health, they cannot, in a long tract of time, escape the contagion of vice, and more sordid criminality, —appears to me a measure which the necessity of example upon such persons, in the present instance does not absolutely require. We are entitled to punish, we would wish to amend, but we must avoid the means of greater corruption.

I would, therefore, with deference to your lordships, propose, that the sentence of the Court should be, to commit them prisoners to the Tolbooth of Edinburgh, therein to be detained in close confinement, for the space only of nine months from this date; and that they should be taken, bound each under the penalty of one thousand merks, to behave in an orderly and peaceable manner for the space of three years thereafter; and to be further so confined, till they find such security, by close confinement. I mean, that there shall be no meeting of associates, no gossiping or drunkenness permitted within their places of confinement: that they may be left seriously and solemnly to reflect on their past, and thereby be enabled to amend their future conduct.

The other judges unanimously agreed to the sentence proposed by lord Henderland, which was then recorded as follows:

The lord justice clerk and lords commissioners of justiciary, having considered the verdict of assize, dated the 8th, and returned the 9th day of January current against the said John Morton, James Anderson, and Malcolm Craig, whereby the assize all in one voice find the libel proven;

The said lords in respect of the said verdict, decern and adjudge the said John Morton, James Anderson, and Malcolm Craig, to be carried from the bar back to the Tolbooth of Edinburgh, therein to be detained for the space of nine months from this date, and thereafter till they shall find sufficient caution and surety, acted in the books of adjournal for their good behaviour and keeping the peace for the space of three years from the date of the bail bond to be granted for that effect, and that under the penalty of one thousand merks Scots for each person, and upon the elapsing of the said nine months, and finding caution as aforesaid, ordain them to be set at liberty, and for these purposes the said lords grant warrant to all proper officers of the law.

(Signed) Robert M'Queen, J. P. D.

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589. Proceedings in the High Court of Justiciary at Edinburgh, against John Elder and William Stewart, on an Indictment charging them with Sedition, January 10th: 33 George III. A. D. 1793.

Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis domo de Edinburgh decimo die Januarii, millesimo septingentesimo et nonogesimo tertio, per honorabiles viros Robertum Macqueen de Braxfield, Dominum Justiciarium Clericum, Alexandrum Murray de Henderland, Davidem Rae de Eskgrove, Joannem Swinton de Swinton, Dominum Gulielmum Nairne de Dunsinan, Baronetum, et Alexandrum Abercromby de Abercromby, Dominos Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

Intran.

John Elder, bookseller and stationer, North Bridge Street, Edinburgh—Panel.

INDICTED and accused at the instance of Robert Dundas, esq. of Arniston, his Majesty's Advocate for his Majesty's interest, for the crime of Sedition and others in manner mentioned in the criminal libel raised against him and William Stewart, merchant in Leith thereanent, bearing, That, whereas by the laws of this, and of every other well governed realm, the wickedly and feloniously writing or printing, or causing to be written, or printed, any seditious libel, or writing: As also the wickedly and feloniously making or casting, or causing to be made or cast any medal or medals bearing inscriptions of a seditious tendency: As also the wickedly and feloniously distributing or circulating any such seditious writing or libel when so printed, and any such medal or medals as above described, or the causing the said seditious writing and the said medal or medals to be distributed and circulated in different parts of the country, are crimes of an heinous nature, dangerous to the public peace, and severely

punishable. Yet true it is and of verity, that the said William Stewart, and John Elder are both and each or one or other of them, guilty actors, or art and part, of all and each or one or other of the foresaid crimes. In so far as upon one or other of the days of the month of September one thousand seven hundred and ninety-two, or of August preceding, or of October following, the said William Stewart and John Elder did both and each, or one or other of them, somewhere in Edinburgh or Leith, both in the county of Edinburgh, or at some other place to the public prosecutor unknown, wickedly and feloniously compose, or write, or cause to be composed, or written, or at least did wickedly and feloniously cause to be printed a seditious libel or writing intituled, "Rights of Man delineated, and the Origin of Government," whereof the tenor follows,

"DECLARATION

OF THE RIGHTS OF MAN AND OF CITIZENS,

BY THE NATIONAL ASSEMBLY OF FRANCE:

WHICH IS AGREEABLE TO SOUND REASON AND COMMON SENSE."

"I. Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.

"II. The end of all political associations is the preservation of the natural and unprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.

"III. The nation is essentially the source of all sovereignty; nor can any individual, or any body of men, be entitled to any authority, which is not expressly derived from it.

"IV. Political liberty consists in the power of doing whatever does not injure another. The exercise of the natural rights of every man, has no other limits than those which are necessary to secure to every other man the free exercise of the same rights; and these limits are determinable only by the law.

"V. The law ought to prohibit only actions hurtful to society. What is not prohibited by the law, should not be hindered; nor should any one be compelled to that which the law does not require.

"VI. The law is an expression of the will of the community. All citizens have a right to concur, either personally or by their representatives, in its formation. It should be the same to all, whether it protects or punishes; and all being equal in its sight, are equally eligible to all honours, places, and employments, according to their different abilities without any other distinction than that created by their virtues and talents.

"VII. No man should be accused, arrested, or held in confinement, except in cases determined by the law, and according to the forms which it has prescribed. All who promote, solicit, execute, or cause to be executed arbitrary orders, ought to be punished, and every citizen called upon or apprehended by virtue of the law ought immediately to obey, and renders himself culpable by resistance.

"VIII. The law ought to impose no other penalties, but such as are absolutely and evidently necessary; and no one ought to be punished, but in virtue of a law promulgated before the offence and legally applied.

"IX. Every man being presumed innocent till he is convicted, whenever his detention becomes indispensible, all rigour to him, more than is necessary to secure his person, ought to be provided against by the law.

"X. No man ought to be molested on account of his opinions; not even on account of his religious opinions, provided his avowal of them does not disturb the public order.

"XI. The unrestrained communication o thoughts and opinions being one of the most precious rights of man, every citizen may speak, write, and publish freely, provided he is responsible for the abuse of this liberty.

"XII. A public force being necessary to give security to the rights of men and citizens, that force is instituted for the benefit of the community, and not for the particular benefit of the persons with whom it is entrusted.

"XIII. A common contribution being necessary for the support of the public force, and for defraying the other expenses of government, it ought to be divided equally among the members of each community according to their abilities.

"XIV. Every citizen has a right, either by himself or his representative, to a free voice in determining the necessity of public contributions, the appropriation of them, and their amount, mode of assessment, and duration.

"XV. Every community has a right to demand of all its agents, an account of their conduct.

"XVI. Every community in which a separation of powers, and a security of rights, is not provided for, wants a constitution.

"XVII. The right to property being inviolable and sacred, no one ought to be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of a previous just indemnity.

"*Quere*, Would not the people of every nation in the world, by enjoying the above rational principles, be in a happier condition? They have but to insist on them, and they will get them,

"*For a nation to be free, it is sufficient that it wills it;*

"*And to love liberty, it is but necessary to know it.*

ORIGIN OF GOVERNMENT.

"I. The nation is essentially the source of all sovereignty.

"II. The right of altering the government is a national right, and not a right of government.

"III. The authority of the people is the only authority on which government has a right to exist in any country.

"IV. Government is nothing more than a national association, acting on the principles of society.

"V. Government is not a trade, which any body of men has a right to set up, and exercise for its own emolument, but is altogether a trust from the people. It has of itself no rights, they are altogether duties.

"In every free country, the artist, mechanic, and labouring man, has a right to bargain for his labour; and how is it that in Britain, which is called the land of freedom, they are by laws deprived of that natural right? Why are they not as free to make their own bargain as the law-makers are to let their farms and houses at what they deem their value?

"The great body of the people allowing these laws to exist, and that curse to liberty, IMPRESS WARRANTS, at the caprice of government to be issued, is tolerating the greatest rights belonging to *mankind* to be violated and kept from them.

"The first and noblest sentiments that ought to be engraved on the heart of every son of freedom should be,

EQUAL REPRESENTATION,

JUST TAXATION,

AND LIBERTY OF CONSCIENCE:

and the opposers of those just and equitable principles, should be considered by the people as tyrants, and ought to be treated as such by them.

"In a nation where the greatest body of the people have no right or voice in choosing their representatives, and are, at the same time, enormously taxed,

"*Quere*, Are they not treated in every respect as slaves or fools? Even to be the inhabitants of a conquered country would be as enviable a situation.

"*Quere*, If a nation chooses a certain number of men to represent them for a fixed period of years, suppose three, and that body, of their own will and accord, prolong their sitting to double the number of years for which they were elected; how far can such conduct be constitutional, or consistent with common sense, and the rights of the people who elected them?

"Can the people of Scotland reflect without indignation on the conduct of a certain *body* of men, and particularly so, on the behaviour of Mr. D——— when the motion was lately made for a reform in the b——hs of S———d, and was rejected by them with the greatest supercility and contempt?

"From the free-will and accord of such men, the people of Britain have very little chance of getting their representation extended on a more rational and equal plan. Such a reform must be accomplished by themselves."

Which seditious libel or writing, the said William Stewart and John Elder, or one or other of them, delivered to John Darling, printer in Edinburgh, upon one or other of the days of the month of September aforesaid, or of August preceding, or October following, and employed him to print the same; and he having accordingly done so, and thrown off 3,000 copies, or thereby, of the said writing, some of which copies were by orders of the said William Stewart and John Elder, or of one or other of them, put up in packages, each containing several hundreds of the said copies, and directed to different booksellers in Glasgow, Paisley, Port-Glasgow, and Anstruther; and which said parcels, together with a number of other loose copies of the said seditious libel or writing having been immediately, or soon thereafter, carried to the shop of the said John Elder, the said William Stewart and John Elder did both and each, or one or other of them, during the course of the month of September foresaid, or of the months of October, November, and December following, wickedly and feloniously distribute and circulate, or cause to be distributed and circulated, a number of copies of the said seditious writing among the inhabitants of the city of Edinburgh and its vicinity; and the said William Stewart and John Elder, or one or other of them, did also, some time in the course of the months of September, or October, November and December foresaid, transmit, or cause to be transmitted to different booksellers in Glasgow, Paisley, Port-Glasgow, and Anstruther, to be there distributed and circulated, several hundred copies of the said seditious writing contained in the different packages abovementioned. And further, the said William Stewart and John Elder, or one or other of them, did, some time in the month of September last, seventeen hundred and ninety-two, or of the month of August, preceding, or of October following, wickedly and feloniously compose or write, or cause to be composed or written, somewhere in Edinburgh or Leith aforesaid, or some other place to the public prosecutor unknown, inscriptions for medals, of the following tenor.—'Liberty, Equality, and 'an end to Impress Warrants,' 'The Nation

'is essentially the Source of all Sovereignty.' 'Liberty of conscience, Equal Representation, 'and Just Taxation.' 'For a nation to be free 'it is sufficient that it wills it.' Which inscriptions being obviously calculated to stir up a spirit of insurrection and opposition to the established government, the said persons above complained upon or one or other of them, did sometime in the said month of September last, or of August preceding, or October following, put into the hands of James Bell, tinman, or white iron smith in Leith, and did employ him to cast and throw off several thousands of the said medals bearing the said inscriptions; which he having done accordingly, and delivered to or caused to be delivered to the saids William Stewart and John Elder, or one or other of them, they did, both and each, or one or other of them, upon one or other of the days of the said months of August, September, or October aforesaid, wickedly and feloniously distribute and circulate, or cause to be distributed and circulated, among the inhabitants of the city of Edinburgh and its vicinity, and in different parts of the country several hundreds of the said medals, bearing the said inscriptions: particularly the said William Stewart and John Elder, or one or other of them, did some time during the course of the months foresaid, transmit, or cause to be transmitted to different persons in Glasgow, Paisley, Port-Glasgow, and Anstruther, several hundreds of the foresaid medals bearing the said inscriptions. And the said William Stewart having upon the twentieth and twenty-first days of December, one thousand seven hundred and ninety-two, been brought before John Pringle, esq. our sheriff depute of the county of Edinburgh, he did in his presence, emit and sign two separate declarations of the respective dates aforesaid: And the said John Elder having been upon the nineteenth day of December, seventeen hundred and ninety-two, brought before the said John Pringle, esq., he did, in his presence emit and sign a declaration; which three declarations: together with a printed copy of the seditious writing, printed and circulated as aforesaid, intituled 'Rights of Man defined;' and 'the Origin of Government;' and subscribed by the said William Stewart, and John Elder, and others; and two of the medals cast, circulated, and distributed, as aforesaid, upon one of which is inscribed on the one side, 'Liberty, Equality, and an end 'to Impress Warrants;' and on the reverse, 'the Nation is essentially the Source of all 'Sovereignty;' and upon the other, 'Liberty of 'conscience, Equal Representation, and Just 'Taxation;' and on the reverse 'for a nation 'to be free, it is sufficient that it wills it,' will all be used in evidence against the said William Stewart and John Elder, and will for that purpose be lodged in due time with the clerk of the high court of justiciary, before which they are to be tried, that they may have an opportunity of seeing the same. And further the said William Stewart and John Elder, are desired to take notice, that five letters will also be produced and used in evidence against them. The first addressed to William Stewart, esq., Leith, dated 'Edin-'burgh, 20th September, 1792,' and bearing to be signed 'J. Campbell.' The second is addressed to the said William Stewart, esq., merchant, Leith, bearing to be dated 'Glas-'gow, 19th September, 1792;' and to be signed 'A. Campbell, secretary to the com-'mittee.' The third addressed to 'Mr. John 'Darling, printer, Advocates-close, Edinburgh,' without date or subscription. The fourth addressed 'Mr. Elder, bookseller, Bridge, 'Edinburgh;' dated,' Leith, 24th September, '1792,' and signed 'William Stewart.' The fifth addressed 'Mr. Elder, bookseller, Bridge, 'Edinburgh;' dated 'Leith, 25th September, '1792,' and signed, 'W. Stewart.' All which letters will in due time be lodged with the clerk of the high court of justiciary, before which the said persons above complained on are to be tried, that they may have an opportunity of seeing the same. At least times and places foresaid, the said wicked and seditious libels or writings, were written, printed, published, and circulated as aforesaid; and the said medals, bearing the inscriptions aforesaid, were cast off and distributed as aforesaid; and the said William Stewart and John Elder, are both and each, or one or other of them, guilty actors or art and part of all and each, or one or other of the foresaid crimes. All which, or part thereof being found proven by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary to be holden by them within the criminal court house of Edinburgh, upon the tenth day of January next, the said William Stewart and John Elder ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

And the said William Stewart being oft' times called in court, and three times at the door of the court house, he failed to appear.

Whereupon his majesty's advocate moved the Court that sentence of fugitation might be pronounced against him, and as he had found caution for his appearance in the sheriff court books of Edinburgh, craved that the bond of caution might be forfeited, and the penalty therein contained, recovered.

The lord justice clerk and lords commissioners of justiciary decern and adjudge the said William Stewart to be an outlaw and a fugitive from his majesty's laws, and ordain him to be put to his highness's horn; and all his moveable goods and gear to be escheat and inbrought to his majesty's use for his contempt and disobedience in not appearing this day and place in the hour of cause to have underlyen the law for the crimes of sedition and others specified in the said crimi-

nal letters raised against him thereanent as he who was lawfully cited to that effect, and oftimes called in court, and three times at the door of the court house, and failing to appear as said is; and ordain the bond of caution granted for the appearance of the said William Stewart in the sheriff court books of Edinburgh, to be forfeited and the penalty therein contained to be recovered by the clerk of this court to be disposed of as the court shall direct.

(Signed) ROBERT M'QUEEN, I. P. D.

Thereafter his majesty's advocate represented that he was determined to use every endeavour to apprehend the person of the said William Stewart and still to bring him to trial along with the panel Elder, and with that view he was under the necessity of moving their lordships for a continuation against the panel to some distant day, betwixt and which he would use every effort to bring Stewart to their lordships bar.

The lord justice clerk and lords commissioners of justiciary, continue the diet at the instance of his majesty's advocate for his majesty's interest, against John Elder, bookseller and stationer, North Bridge-street, Edinburgh, till Monday the 11th day of February next, at ten o'clock forenoon, in this place; ordain parties, witnesses, assizers, and all concerned then to attend each under the pains of law.

11th February, 1793.

Diet continued against Elder, till Monday, the 25th day of February instant.

25th February, 1793.

Diet continued against Elder till Monday, the 11th day of March next, at ten o'clock forenoon.

11th March, 1793.

Whole diets of court continued till Monday, the 18th day of March instant.

There does not appear on record any further continuation, or procedure against Elder.

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590. Proceedings in the High Court of Justiciary at Edinburgh, against JAMES SMITH and JOHN MENNONS, on an Indictment charging them with Sedition, February 4th: 33 GEORGE III. A. D. 1793.

Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis domo de Edinburgh, quarto die Februarii, millesimo septingentesimo et nonogesimo tertio, per honorabiles viros Robertum Macqueen de Braxfield, Dominum Justiciarium Clericum, Alexandrum Murray de Henderland, Davidem Rae de Eskgrove, Joannem Swinton de Swinton, Dominum Gulielmum Nairne de Dunsinnan, baronetum, et Alexandrum Abercromby de Abercromby, Dominos Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

Intran,

John Mennons, printer in Glasgow—Panel.

INDICTED and accused at the instance of Robert Dundas, esquire, of Arniston, his majesty's advocate, for his majesty's interest, for the crime of printing and publishing a seditious paper or writing, in manner mentioned in the criminal libel raised against him thereanent; bearing, that albeit by the laws of this realm, the wickedly and feloniously composing and writing, or the wickedly and feloniously printing and publishing, or the wickedly and feloniously causing to be composed and written, or printed and published, any seditious paper or writing, tending to create a spirit of disaffection to us, and of discontent with the present excellent constitution of our kingdom, and to excite tumults and disorders therein, or which publicly express approbation of works of a seditious and inflammatory nature,—more especially when the practical use of these writings are expressly recommended to the community,—are crimes of an heinous nature, subversive of order and good government, and severely punishable: Yet true it is, and of verity, That the said James Smith, and John Mennons, have both and each, or one or other of them, presumed to commit, and are guilty, actors or art and part, of all and each, or of one or other of the said crimes aggravated as aforesaid: In so far as upon Thursday, the twenty second day of November last, or upon one or other of the days of that month, or of October preceding, or of December following, a meeting of the inhabitants of the village of Partick, in the parish of Govan, and county of Lanark, having been called by beat of drum, to assemble that evening at the house of Allan Craig, innkeeper there, a number of people did assemble accordingly; and when so assembled, they thought proper to form themselves into a club or association to meet weekly thereafter, under the denomination of 'The Sons of Liberty; and the 'Friends of Man,'—in order to bring about a reform in parliament, and a redress of supposed grievances in our present excellent

constitution; that of this association, John Auchincloss, saddletree-maker in Partick, was elected president; John Gibson, apprentice to David Kessock, linen printer at Meadowside, contiguous to Partick aforesaid, vice-president, and Peter Hart, apprentice or print cutter with the said David Kessock, secretary, for the evening; in which respective capacities they officiated accordingly:—That the meeting being thus constituted, the said James Smith did produce a paper containing resolutions, which he proposed should be by them adopted; and which resolutions he had some days before wickedly and feloniously composed and written for that purpose: That these resolutions were accordingly, with some small variations, adopted by the meeting, and were transcribed by the said James Smith, in their presence, and signed by their president, vice-president, and secretary; which resolutions, as also a preamble to them, likewise written out by the said James Smith in presence of the foresaid meeting, are of the following tenor:

"*Partick, November 22, 1792.*

"The inhabitants of the village of Partick, and its neighbourhood, animated with a just indignation at the honour of their town being stained, by the erection of a Burkified society, have formed themselves into an association, under the name of the Sons of Liberty, and the Friends of Man.—At this meeting, from its number, equally hopeful to the people, as formidable to the tools of tyrants, the following resolutions were unanimously adopted: 1st, That the society do stand forward in defence of the Rights of Man, and co-operate with the respectable assemblage of the Friends of the People in Glasgow, and with the innumerable host of reform associations in Scotland, England, and Ireland, for the glorious purpose of vindicating the native rights of man, liberty, with a fair, full, free, and equal representation of the people in parliament. 2nd, That the Sons of Liberty in Partick, having attentively perused the whole works of the immortal author of the *Rights of Man*, THOMAS PAINE, declare it as their opinion, that if nations would adopt the practical use of those works, tyrants and their satellites, would vanish like the morning mist before the rising sun! that social comfort, plenty, good order, peace, and joy, would diffuse their benign influence over the human race.

JOHN AUCHINCLOSS, President.
JOHN GIBSON, Vice-President.
PETER HART, Secretary."

And the said James Smith, after having prevailed upon the meeting to adopt these resolutions, with the preamble above-mentioned, likewise proposed that directions should be given to have them inserted in one of the Glasgow newspapers, which was done accordingly; the said resolutions with the preamble above-mentioned, having been by general consent carried by one or other of the meeting, or by some other person or persons to the public prosecutor unknown, to the printing-house of the said John Mennons in the town of Glasgow aforesaid, were, after being revised by him, inserted in the newspaper called the Glasgow Advertiser, and Evening Intelligencer, No. 730, from Monday, Nov. 19th, to Friday, November 23rd, and five hundred copies or thereby of the said paper, containing the said resolutions, with the preamble above-mentioned, in the form of an advertisement, were printed off, and sold or distributed by the said John Mennons. And the said James Smith having, on the eighth day of December last, been brought before William Honyman, esquire, sheriff depute of Lanarkshire, did then in his presence emit a declaration tending to show his guilt in the premisses; which declaration is subscribed by the said James Smith, and the said William Honyman: and the said John Mennons, having, on the said eighth day of December last, been brought before the said William Honyman, esquire, did likewise emit a declaration in his presence, also tending to show his guilt in the premisses; which declaration is likewise subscribed by the said John Mennons, and William Honyman, esquire, and both which declarations, together with the manuscript copy of the above-mentioned resolutions, as written by the said James Smith, and subscribed by the said John Auchincloss, John Gibson, and Peter Hart, together with the preamble above-mentioned, also written by the said James Smith, with the libellous and seditious book or publication intituled, "Paine's Whole Works," (to which the above resolutions expressly refer) containing the following passages:

(Pamphlet, intituled Common Sense, p. 12.)

"Government by kings was first introduced into the world by the heathens, from whom the children of Israel copied the custom. It was the most prosperous invention the devil ever set on foot for the promotion of idolatry. The heathens paid divine honours to their deceased kings, and the christian world hath improved on the plan, by doing the same to their living ones. How impious is the title of Sacred Majesty, applied to a worm, who, in the midst of his splendor, is crumbling into dust! As the exalting one man so greatly above the rest cannot be justified on the equal rights of nature, so neither can it be defended on the authority of Scripture; for the will of the Almighty, as declared by Gideon and the Prophet Samuel, expressly disapproves of government by kings. (p. 13.) Monarchy is ranked in Scripture as one of the sins of the Jews, for

which a curse in reserve is denounced against them.

(Page 20.)

"In short monarchy and succession have laid not this or that kingdom only, but the world, in blood and ashes; it is a form of government which the word of God bears testimony against, and blood will attend it.

(Page 21.)

"Why is the constitution of England sickly, but because monarchy hath poisoned the republic; the Crown hath engrossed the Commons.—In England, a king hath little more to do than to make war, and give away places; which in plain terms is, to impoverish the nation, and set it together by the ears.—A pretty business indeed, for a man to be allowed eight hundred thousand pounds sterling a-year for, and worshipped into the bargain—of more worth is one honest man to society, and in the sight of God, than all the crowned ruffians that ever lived.

(Page 37.)

"But where, say some, is the king of America? I will tell you, friend, he reigns above, and does not make havoc of mankind like the royal tyrant of Britain.

(Rights of Man, part 1st. p. 39.)

Many things in the English government appear to me the reverse of what they ought to be, and of what they are said to be. The parliament, imperfectly and capriciously elected as it is, is nevertheless supposed to hold the national purse in trust for the nation; but in the manner in which an English parliament is constructed, it is like a man being both mortgager and mortgagee; and in the case of misapplication of trust, it is the criminal sitting in judgment upon himself. If those who vote the supplies are the same persons who receive the supplies when voted, and are to account for the expenditure of the supplies to those who voted them, it is themselves accountable to themselves; and the Comedy of Errors concludes with the Pantomime of Hush.—Neither the ministerial party nor the opposition will touch upon this case; the national purse is the common hack which each mounts upon; it is like what the country people call ride and tie—You ride a little way, and then I.

(Page 78.)

"They order these things better in France. What are the present governments in Europe but a scene of iniquity and oppression? What is that of England?—do not its own inhabitants say it is a market where every man has his price, and where corruption is common traffic at the expense of a deluded people? No wonder, then, that the French revolution is traduced.

(Page 79.)

"Admitting that government is a contrivance of human wisdom, it must necessarily follow that hereditary succession and hereditary rights (as they are called) can make no part of it; because it is impossible to make wisdom hereditary; and, on the other hand, that cannot be a wise contrivance which, in its operation, may commit the government of a nation, to the wisdom of an idiot. The ground which Mr. Burke now takes is fatal to every part of his cause. The argument changes from hereditary rights to hereditary wisdom; and the question is, who is the wisest man? He must now show that every one in the line of hereditary succession was a Solomon, or his title is not good to be a king. What a stroke has Mr. Burke now made! To use a sailor's phrase, he has swabbed the deck, and scarcely left a name legible in the list of kings; and he has mowed down and thinned the House of Peers with a scythe as formidable as death and time.

(Page 83.)

"When Mr. Burke says that his majesty's heirs and successors, each in their time and order, will come to the crown with the same contempt of their choice, with which his majesty has succeeded to that he wears, it is saying too much even to the humblest individual in the country, part of whose daily labour goes to making up the million sterling a-year, which the country gives the person it styles a king. Government with insolence is despotism; but when contempt is added, it becomes worse; and to pay for contempt, is the excess of slavery. This species of government comes from Germany, and reminds me of what one of the Brunswick soldiers told me, who was taken prisoner by the Americans in the late war: 'Ah!' said he, 'America is a fine free country; it is worth the people's fighting for: I know the difference, by knowing my own. In my country, if the prince says, eat straw, we eat straw!' God help that country, thought I, be it England or elsewhere, whose liberties are to be protected by German principles of government, and princes of Brunswick.

(Page 90.)

"The English may wish, as I believe they do, success to the principles of liberty in France or in Germany; but a German elector trembles for the fate of despotism in his electorate; and the duchy of Mecklenburg, where the present queen's family governs, is under the same wretched state of arbitrary power, and the people in a slavish vassalage.

(Page 85.)

"But the second head, that of a nation establishing a particular family with here-

ditary powers, does not present itself as despotism on the first reflection; but if men will permit a second reflection to take place, and carry that reflection forward but one remove out of their own persons to that of their offspring, they will then see that hereditary succession becomes in its consequences the same despotism to others, which they reprobate it for themselves.

(Page 86.)

"It operates to preclude the consent of the succeeding generation; and the preclusion of consent is despotism. When the person who at any time shall be in possession of a government, or those who stand in succession to him, shall say to a nation, I hold this power in contempt of you, it signifies not upon what authority he pretends to say it. It is no relief, but an aggravation, to a person in slavery to reflect that he was sold by his parent; and as that which heightens the criminality of an act cannot be produced to prove the legality of it, hereditary succession cannot be established as a legal thing.

(Part 2. p. 30.)

"All hereditary government is in its nature tyranny. An heritable crown, or an heritable throne, or by what other fanciful name such things may be called, have no other significant explanation than that mankind are heritable property. To inherit a government is to inherit the people as if they were flocks and herds.*

(Page 63.)

"Monarchy would not have continued so many ages in the world, had it not been for the abuses it protects. It is the master fraud which shelters all others, by admitting a participation of the spoil it makes itself friends; and when it ceases to do this, it will cease to be the idol of courtiers

(Page 51.)

"The act called the Bill of Rights comes here into view; what is it but a bargain which the parts of the government made with each other, to divide powers, profits, and privileges? You shall have so much, and I will have the rest; and with respect to the nation, it said, for your share you shall have the right of petitioning. This being the case, the Bill of Rights is more properly a bill of wrongs and of insult. As to what is called the Convention Parliament, it was a thing that made itself, and then made the authority by which it acted. A few persons got together, and called themselves by that name. Several of them had never been elected, and none of them for the purpose.—From the time of William, a species of government arose, issuing out of this coalition bill of rights, and more so since the corruption introduced at the Hanover succession by the agency of Walpole, that can be described by no other name than despotic legislation. Though the parts may embarrass each other, the whole has no bounds; and the only right it acknowledges out of itself is the right of petitioning. Where, then, is the constitution either that gives or that restrains power? It is not because a part of the government is elective that makes it less a despotism, if the persons so elected possess afterwards, as a parliament, unlimited powers; election, in this case, becomes separated from representation; and the candidates are candidates for despotism.*

(Page 54.)

"The attention of the government of England (for I rather choose to call it by this name than the English government) appears, since its political connexion with Germany, to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purpose. Domestic concerns are neglected; and with respect to regular law, there is scarcely such a thing.*

(Page 58.)

"With respect to the two Houses of which the English parliament is composed they appear to be effectually influenced into one, and, as a legislature, to have no temper of its own. The minister, whoever he at any time may be, touches it as with an opium wand, and it sleeps obedience. But, if we look at the distinct abilities of the two Houses, the difference will appear so great as to show the inconsistency of placing power where there can be no certainty of the judgment to use it. Wretched as the state of representation is in England, it is manhood compared with what is called the House of Lords; and so little is this nickname House regarded, that the people scarcely inquire at any time what it is doing. It appears also to be most under influence, and the farthest removed from the general interest of the nation.*

(Page. 88.)

"Having thus glanced at some of the defects of the two Houses of Parliament, I proceed to what is called the Crown, upon which I shall be very concise. It signifies a nominal office of a million sterling a year, the business of which consists in receiving the money; whether the person be wise or foolish, sane or insane, a native or a foreigner, matters not. Every ministry acts upon the same idea that

* These are some of the passages on which the information against Paine was founded; *see* his case, *ante*, Vol. 22, p. 407, *et seq.*

Mr. Burke writes, namely, that the people must be hoodwinked, and held in superstitious ignorance by some bugbear or other; and what is called the Crown answers this purpose; and therefore answers all the purposes to be expected from it. This is more than can be said of the other two branches. The hazard to which this office is exposed in all countries, is not from any thing that can happen to the man, but from what may happen to the nation—the danger of its coming to its senses."

(Page 125.)

"The fraud, hyprocrisy, and imposition of government are now beginning to be too well understood to promise them any long career. The farce of monarchy and aristocracy in all countries is following that of chivalry; and Mr. Burke is dressing for the funeral. Let it then pass quietly to the tomb of all other follies, and the mourners be comforted. The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick, for men at the expense of a million a year, whounderstood neither her laws, her language, nor her interest, and whose capacities would scarcely have fitted them for the office of a parish constable. If government could be trusted to such hands, it must be some easy and simple thing indeed; and materials fit for all the purposes may be found in every town and village in England."

(Part 2nd, Page 68.)

"From a small spark kindled in America, a flame has risen not to be extinguished; without consuming, like the *ultima ratio regum*, it winds its progress from nation to nation, and conquers by a silent operation. Man finds himself changed, he scarcely perceives how. He acquires a knowledge of his rights, by attending justly to his interest; and discovers, in the event, that the strength and powers of despotism consist wholly in the fear of resisting it; and that, in order to be free, it is sufficient that he wills it.

(Part 1st, Page. 106).

"When we survey the wretched condition of man under the monarchical and hereditary system of government, dragged from his home by one power, or driven by another, impoverished by taxes more than by enemies, it becomes evident that those systems are bad, and that a general revolution in the principle and construction of governments is necessary."

As also other passages, of a tendency equally seditious and inflammatory, together with the newspaper called "the Glasgow Advertiser and Evening Intelligencer, from Monday, November 19th, to Friday November 23d, 1792 (No. 730):" being all to be used in evidence against the said James Smith and John Mennons respectively upon their trial, will, for that purpose, in due time, be lodged in the hands of the clerk of the high court of justiciary, before which they are to be tried, that they may have an opportunity of seeing the same. At least, times and places aforesaid, the said seditious paper or writing was wickedly and feloniously composed, written, printed and published, and an approbation of the seditious and inflammatory writings of the above-mentioned Thomas Paine was publicly expressed, and the practical use of them expressly recommended to the community: And the said James Smith and John Mennons are both and each, or one or other of them, guilty actors, or art and part thereof. All which, or part thereof, being found proved by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary to be holden by them within the criminal court house of Edinburgh, upon the fourth day of February next, the said James Smith and John Mennons ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

And James Smith, gunsmith in Gorbals of Glasgow, likewise indicted in the said criminal letters being ofttimes called in court, and three times at the door of the court house, by a macer of court as use is, he failed to appear: whereupon his majesty's advocate moved, that sentence of fugitation and outlawry, might be pronounced against him.

The lord justice clerk and lords commissioners of justiciary decern and adjudge the said James Smith to be an outlaw and fugitive from his majesty's laws, and ordain him to be put to his highness's horn; and all his moveable goods and gear to be escheat and inbrought to his majesty's use, for his contempt and disobedience in not appearing this day and place in the hour of cause, to have underlyen the law for the crimes specified in the said criminal letters, as he who was lawfully cited to that effect ofttimes called in court and three times at the door of the court house, and failing to appear as said is; and ordain the bail bond granted for his appearance to be forfeited, and the penalty therein contained to be recovered by the clerk of this court to be disposed of as the court shall direct.

(Signed) ROBERT M'QUEEN, L. P. D.

Thereafter his majesty's advocate represented that it was his wish that the panel and Smith, the person now fugitated should stand trial together, and as there was still a prospect of apprehending Smith and bringing him to trial, he would move their lordships for an adjournment against the panel for a fortnight.—Continued till Monday the 18th February instant.

No further procedure took place.

591. Proceedings before the High Court of Justiciary at Edinburgh, on an Information exhibited by the Lord Advocate of Scotland, against Captain WILLIAM JOHNSTON, charging him with a Contempt of the said Court, January 25th, 29th, 31st, February 12th, 14th, 15th, 19th, 23rd: 33 GEORGE III. A. D. 1793.

Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis domo de Edinburgh, vicessimo quinto die Januarii, millesimo septingentesimo et nonogesimo tertio, per honorabiles viros Robertum Macqueen de Braxfield, Dominum Justiciarium Clericum, Alexandrum Murray de Henderland, Davidem Rae de Eskgrove, Joannem Swinton de Swinton, Dominum Gulielmum Nairne de Dunsinan, baronetum, et Alexandrum Abercromby de Abercromby, Dominos Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

THE which day his Majesty's advocate represented that there had appeared in an Edinburgh newspaper intituled "The Edinburgh Gazetteer," dated the 15th current, an account of the trial of Morton, Anderson, and Craig,* lately tried and convicted, before this high court, to which he considered it his duty to call the particular attention of their lordships. That the account given of the said trial, was not only partial, untrue, and unjust, but by imputing partiality and injustice to the Court, in the conduct of that trial, as well as from other circumstances appearing in the paper itself, a copy of which was produced, was clearly and evidently calculated to lessen the regard which the people of this country owe to the supreme criminal court; and appeared to him in its whole tendency to afford a precedent highly dangerous to the constitution of this country. That considering this account as a high indignity offered to the Court, and as an imputation upon the verdict of the jury, he felt it peculiarly his duty to call their lordships attention to it.—And as William Johnston, esq. appeared, from the paper now produced, to be the publisher and in the printed proposals also produced, published in September last, bearing his sig-

* The following was the account of the trial of Morton, Anderson, and Craig, inserted in the Gazetteer of January 15th, which gave rise to these proceedings.

"HIGH COURT OF JUSTICIARY.

"The Lord Justice Clerk, previous to the examination of the witnesses, made many observations on the excellence of the British constitution. He observed, in a most eloquent speech, 'that his conscience disapproved of 'French reformation, as they are a nation of 'Atheists; and I wish that we could avoid 'the danger of their principles. They deny 'their dependance on the great God of Pro-'vidence in whose sight we are mere mush-'rooms. Our blasphemies can do na harm 'to him who is all powerful; he looks on us 'as beneath him.—But to blaspheme against 'his most gracious majesty; what impiety! 'when under his government we enjoy sae 'mony blessings. The reformers talk of 'liberty and equality, this they hae in every 'thing consistent wi' their happiness, and 'equality also. However low born a man 'may be, yet his abilities may raise him to 'the highest honours of the state. He may 'rise to be a lord chancellor, the head of the 'law; he may rise to be archbishop of Can-'terbury, the head of the kirk; and tak pre-'cedence of a' ranks but the blood-royal. 'What mair equality wad they hae? If they 'hae ability, low birth is not against them. 'But that they hae a right to a representa-'tion in parliament, I deny: the landed 'interest alone should be represented in 'parliament, for they only hae an interest in 'the country. In God's name let them gang. 'I wish them not to stay; but I deny they 'hae a right to representation in parliament. 'I also maintain that the landed interest pay 'all the taxes. The shoon, I allow, are 'dearer by almost a half than I remember 'them, owing to the additional taxes on 'leather, which the exigencies of the state 'requires; but it was not the mechanic nor 'the labourer that paid the tax, but the pro-'prietor of the land; for I remember when I 'could pay a labourer with half the sum 'which I now doe. He was therefore of 'opinion that the present constitution was 'the best that ever existed.'

"The first witness examined on the part of the prosecutor, was corporal Home; he deponed that he was sitting in the outer hall, from king James's room, in company with other soldiers when Thomas Hucster, along with J. Anderson, one of the panels called for him to join their company; when he went into the room, Anderson took him by the

nature, and dated from his dwelling house, North Frederick-street, avowed himself to be both the principal proprietor and conductor of the above newspaper, then about to be published;—he submitted that, agreeably to the practice observed in similar cases, their lordships would take into their immediate and serious consideration, a matter which in his apprehension concerned their own authority, and the general welfare of the country.

The lord justice clerk and lords commissioners of justiciary, having considered what is before represented, and the dangerous consequences of such publications, do order and appoint William Johnston, publisher of the said newspaper intituled "the Edinburgh Gazetteer" to sist himself personally in court, within the New Session house of Edinburgh, upon Tuesday the 29th day of January instant at two o'clock afternoon, to answer for his conduct, with certification; and ordain this order to be intimated to him personally, or at his dwelling house, by a macer of court for that purpose, who is hereby appointed to serve him with a copy of the above information and of this order, and to report an execution said day, bearing his having done so.

(Signed), Robt. Mac. Queen, J. P. D.

Curia, &c., 29th January, 1793.

The which day the said lords proceeded to take into consideration the order of Court, of date the 25th current, respecting the attendance of William Johnston, publisher of the Edinburgh Gazetteer, at the bar of this court, this day.

The macer reported an execution of the order being duly served.

Mr. *Alexander Wight*, advocate, as counsel for Mr. Johnston, represented that he was confined to his house, and to a dark room, on occasion of a severe inflammation in one of his eyes, and had been so since the beginning of this month, by reason of which, he could not go out without danger; for evidence of which

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hand, called him a brave fine fellow; said he should join their club for freedom and liberty, and that his pay should be 1*s.* or 1*s.* 6*d.* per day, which was better than 6*d.*; that Anderson also took money out of his pocket, which he held in his hand, offering him, which he refused to receive. He then heard Anderson give the toast of 'George III. and last,' and Morton added 'damnation to all crowned 'heads,' that he took the pot and drank, 'God bless the king and royal family,' when Anderson gave him a blow, which he endeavoured to return, but could not reach him across the table; That he then went out to the commanding officer and received an order to shut the barrier gate, and keep the whole company prisoners, till sir C. Ross should return to the garrison. That after receiving the order, he returned to the canteen, when M. Craig threw the pot at him, which struck against the wall, and broke in pieces,

"Several other soldiers swore to some of the above circumstances; but, differing in particulars. Home positively swore there were no other soldiers in the room with him.

"Smith deponed he was in the room with him along with the soldiers.—Stronach swore, that Anderson laid money on the table, and that Craig struck Hucster.

Captain Cameron deponed, that Home came to him and said he had been ill used by some townsmen in the lower canteen; that one of them had struck him a blow, but that he had knocked him down; and he wished to have an order to keep them prisoners. The captain, who is a gentleman of consummate professional abilities, gave this order, but desired the soldiers to use them with civility, till sir Charles Ross should return to the Castle.

"The witnesses for the panel all swore, that no such toasts were given; some of them never heard an expression of disloyalty.

—Grierson swore, that it was him who took the corporal by the hand, and called him a fine fellow: That the words said to have been given as a toast, were only talked of betwixt him and Morton, as having been seen in some newspaper, or stuck on the College gate.

"Knowles deponed, that he broke the handle of the pot, in going round the table, and threw the rest of it down, as he had paid for it.

"The landlord also swore, that the pot, when broke fell at his feet, and that he was standing betwixt him and the panels, and could not see by whom it was thrown down, as he was standing with his back to them.

"Thompson, another witness, swore also, that Knowles broke the pot, throwing it into a jar-hole.

"We forbear making any comment on this evidence. We only remark, that it is a pity any boy, who by his own account was only about fourteen years of age, should have been received as evidence on such an interesting trial; or that any officer should converse with the witnesses, while in court. One of them placing himself exactly opposite to the evidence, could not, in our apprehension, be altogether justifiable; for, though we are fully convinced of the corporal's rectitude, such conduct might have a tendency to influence the minds of soldiers."

"One of the prisoners, M. Craig, is so dangerously ill that his life is despaired of."

"The great pressure of interesting matter prevents us from fulfilling altogether our promise in our last, in giving to the public the full trial of the three printers; but we have given such parts of it, as will, in our opinion, lead the public to form a correct judgment of this interesting business."

The trial of Morton, Anderson, and Craig, is reported in this Volume, p. 7.

he produced a certificate on soul and conscience, under the hands of a surgeon and physician, which certificate, with the execution of service, were read in open court.

The lords commissioners of justiciary, having considered what is before represented with the certificate produced, they appoint doctor Alexander Monro, professor of anatomy, and doctor James Hamilton, one of the physicians to the Royal Infirmary of Edinburgh, and Messrs. Alexander Wood, and Benjamin Bell, surgeons in Edinburgh, or any three of them, to proceed to the house of the person designed in the execution returned, 'William 'Johnston, esquire, publisher of the news-'paper intituled the Edinburgh Gazetteer;' and to inspect and examine his person, and the situation of his health, and to report to this high court upon oath upon Thursday next, at two o'clock afternoon, whether the said person be in such a situation of health as that it would be dangerous or hazardous to his life to bring him to the bar of this court; and appoint the macer to attend the said physicians and surgeons, or any three of them, at any time when it shall suit their convenience betwixt and said time to take such inspection, and make such examination; and ordain this appointment to be intimated to them forthwith.

(Signed) ALEX. MURRAY, I. P. D.

Curia, &c., 31st January, 1793.

The order of Court at last diet being read over, his majesty's advocate represented, that the gentlemen appointed to visit the beforementioned William Johnston were in attendance, and they being called, appeared and deponed as follows:

Compeared, doctor James Hamilton, physician in Edinburgh, and one of the physicians to the Royal Infirmary of Edinburgh, who being solemnly sworn and interrogated, depones, That in consequence of the appointment of the Court, the deponent, alongst with doctor Alexander Monro, professor of anatomy, Messrs. Alexander Wood, and Benjamin Bell, surgeons in Edinburgh, proceeded to the house of the person described to them by a macer of court who attended them, "William Johnston, esquire," which house is in North Frederick-street, Newtown; that they did so yesterday at eleven o'clock forenoon, and then and there inspected the person, and examined the state of health of the said William Johnston. That said William Johnston complained of an inflammation in his left eye, of a headache, and he appeared languid. That the deponent examined the left eye of the said William Johnston, and it appeared to be inflamed. That the deponent did not observe any other symptom of disease or disorder about the said William Johnston, except the inflammation in his left eye, and languid look. Depones, that he is of opinion, that the said William Johnston would incur no hazard or danger of his life by being brought to the bar of this high court; and being interrogated, whether or not said William Johnston would incur any risk or hazard of losing his eye, by being brought to the bar of this court, depones, that he cannot give a precise answer to this question; that exposure to the light might aggravate the inflammation in said William Johnston's eye, and if it did so he cannot say what might be the consequence of that: and being interrogated, whether he thought the said William Johnston in the way of recovery, depones, that he did not hear the circumstances of said William Johnston's case so minutely described, as to be able to form a precise judgment with respect to his recovery; but from what the deponent observed, he rather thought that said William Johnston's eye was in the way of recovery. Depones, that he cannot say when the inflammation of his eye will be gone, *causa scientiæ patet*, and this is truth as he shall answer to God.

(Signed) JAMES HAMILTON,
ALEX. MURRAY, I. P. D.

Mr. *Alexander Wood*, surgeon in Edinburgh, being solemnly sworn and interrogated, depones and concurs with the said doctor James Hamilton in all things, with this variation: That he thinks he was told by William Johnston himself, that his eye had been worse two days before, than it was when the deponent examined it. That it seemed to be a very sore eye, and the deponent does not know but it might turn worse to day; as there is no saying what turns such disorders may take, which is truth as he shall answer to God.

(Signed) ALEX. WOOD,
ALEX. MURRAY, I. P. D.

Mr. *Benjamin Bell*, surgeon in Edinburgh, being solemnly sworn and interrogated, depones and concurs with the said doctor James Hamilton in all things with the following variations: That besides the inflammation in said Johnston's left eye, the deponent also observed, that the eye-lid thereof was swelled. Depones, that about a fortnight ago, he had occasion to attend said William Johnston in the way of his profession. That an operation was then performed on the said William Johnston's eye by scarifying it round the eye-ball. That from what he then observed of the state of said eye, compared with what he remarked yesterday, the deponent is of opinion that said eye is considerably better, and that it is most likely, that said eye will be free of inflammation in six or seven days, all which is truth as he shall answer to God.

(Signed) BENJ. BELL,
ALEX. MURRAY, I. P. D.

The lords commissioners of justiciary, having taken into consideration the foregoing depositions, they renew the order of court for the attendance of the said William Johnston to Tuesday the 19th day of February next, upon which day the said lords ordain the said William Johnston to sist himself at the

bar of this court at two o'clock afternoon, and ordain this order to be intimated to him immediately, by a macer of court, who is to report an execution of his having done so.

(Signed) ALEX. MURRAY, I. P. D.

Curia, &c., 12th February, 1793.

The which day the order of court of date the 31st day of January last, being read over, the macer reported an execution of the service thereof; and in obedience to said order, William Johnston, printer of the newspaper intituled, "The Edinburgh Gazetteer," sisted himself at the bar, and he having been called upon, emitted the following declaration.

The said William Johnston being examined and interrogated, declares, that he is the publisher of paper intituled, 'Proposals for a new 'paper intituled The Edinburgh Gazetteer, to 'be published at Edinburgh every Tuesday 'and Friday;' a printed copy of which has been shown to the declarant, and is now subscribed by him, and the lord president of the court as relative hereto; declares and acknowledges that he is the publisher of a paper intituled, "The Edinburgh Gazetteer," bearing date, "Tuesday, January 15th, 1793;" a printed copy of which has been now shown to the declarant, and is marked by him and the lord president of the court as relative hereto.

(Signed) W. JOHNSTON,
ALEX. MURRAY, I. P. D.

Diet continued till the 14th instant; and the said William Johnston ordained to be committed prisoner to the Tolbooth of Edinburgh, therein to be detained till that time.

Thereafter there was presented to the said lords a petition in the name of the said William Johnston, and subscribed for him by the said Alexander Wight, advocate; humbly shewing, That a warrant having been granted by the Court for committing the petitioner to the Tolbooth of Edinburgh till Thursday next, at two o'clock afternoon;

That in the petitioner's present situation of health, his being confined to prison, would be attended, he apprehends, with considerable danger.

That as the offence with which he is charged, he humbly apprehends, is bailable, and as he is ready instantly to find caution for his appearance at the bar at the time specified in the warrant of commitment, and at all other diets of court to such extent as their lordships may think proper. Praying, therefore, it might please their lordships to recall the warrant of commitment granted against him, and to admit him to bail.

The lords commissioners of justiciary having considered the foregoing petition, they find that the petitioner may be admitted to bail; and in this case modify the bail to six thousand merks Scots, and upon the petitioner finding sufficient caution and surety, acted in the books of adjournal, under that penalty for his appearance at the bar upon the said fourteenth day of February instant, and whole after diets of court, recall the said warrant of commitment, and ordain the petitioner to be set at liberty.

(Signed) ALEX. MURRAY, I. P. D.

Curia.—14th February, 1793.

William Johnston publisher of the Edinburgh Gazetteer, sisted himself at the bar in terms of the order of court, dated the 12th current, and he being again examined and interrogated, emitted the following declaration.

Compeared the said William Johnston and being interrogated, declares that a paper intituled "Substance of Captain Johnston's apology to the Lords of Justiciary upon Tuesday the 12th day of February current, for the insertion of a paragraph in his newspaper of the 15th of January last, relative to the trial of Morton, Craig, &c." was given in to the clerk of court, and is subscribed by the declarant (and the Court order said paper to be inserted in the record of court agreeable to the requisition in the end thereof, and now repeated by captain Johnston); and the said William Johnston being further interrogated, declares that Simon Drummond, printer in Edinburgh, is the person alluded to by the declarant, in that paper, as the person who superintended the publication of the newspaper intituled "The Gazetteer," and to whom he gave instructions not to insert any thing in said newspaper without his the declarant's approbation, and this he declares to be truth.

(Signed) W. JOHNSTON.
ALEX. MURRAY, I. P. D.

The lords commissioners of justiciary having considered what is before declared, order and appoint the said Simon Drummond, printer, to sist himself personally at the bar of this court to-morrow, at two o'clock afternoon; and ordain this order to be intimated to him by a macer of court immediately: And the said William Johnston also to sist himself at the same hour.

(Signed) ALEX. MURRAY, I. P. D.

Of which paper intituled, 'Substance of 'captain Johnston's Apology to the Lords of 'Justiciary, &c.' and referred to in the foregoing declaration, the tenor follows:

My Lords;—I am deeply to regret, that I have unfortunately incurred the displeasure of this Court. Unfortunate I consider it, because I am inclined to think that every honest man must feel it a misfortune to be suspected as capable of giving deliberate offence to the administrators of justice.

I am seriously to lament, my lords, that the gentlemen who attended me during my illness, conceived it proper to send a certificate to the Court, stating the situation of my health. Had I been acquainted with the forms, I solemnly protest that no motives, however urgent,

no personal consideration for the safety of my eye, should have restrained me one moment from paying implicit obedience to your lordships summons.

I have always thought, and I trust I shall continue to think, that the loss of health or of life itself, are not to be put in competition with a stain upon my character.

The crimes of which I am accused, I know I am incapable of committing. If I have erred, my lords, it was an error the chastest reputation might have been guilty of—an error wholly unknown to me—committed contrary to my directions, and at a time when I was in a state of blindness. The responsibility attached to my particular situation as a proprietor of a newspaper, is, thank God, my only crime; to that responsibility I shall most chearfully plead guilty.

Were I capable, my lords, to treat the laws with disrespect, the proceedings of this or of any court of justice with contumely—were I capable of wantonly holding up to ridicule or censure the equity of its decisions—were I so great a fool, and an idiot, so entirely destitute of common prudence, and common discretion, as to convey an imputation on the high judicial situation in which your lordships are placed, I should set myself down as an unworthy member of society. I have always venerated the laws—I know their necessity, and their utility.—No man holds a court of justice in higher respect, or more reveres than I do, that dignity with which your lordships as guardians of those laws are invested by the constitution.

I am extremely sorry that I do not see a learned lord [the lord justice clerk] in his place, to whom I should have been happy to have addressed myself, to whom, in some measure, I think I am bound to make an apology, but not for a fault committed by me. I offered this atonement in defence of my own reputation as a gentleman—as well as for that respect I bear to the official department in which that learned lord presides, and the regard to which he is entitled; this, my lords, is the first day I have ventured abroad since the beginning of the year,—and it is only within these ten days I have been out of darkness. From the commencement of January to the 16th, the day I underwent a severe operation in my eye, had the treasures of the world been laid at my feet, I could not have dictated, read, or wrote one line. To those who know the agony attending a violent inflamed eye, I shall appeal, if what I have said is an exaggeration.

At the time I was taken ill, I did every thing that the most cautious prudence could suggest; I had given the most positive orders to the person who superintended the paper, not to insert any thing without my knowledge, and approbation; in the condition I was in, some degree of confidence was absolutely necessary; but I narrowed that confidence as much as it was possible.—The paper which had reflected on the trial before the court of justiciary, and which gave much offence, was printed on the 15th; at that period, and indeed both previous and subsequent to it, I was incapacitated from attending to any business whatever, and I continued in total ignorance of the existence of this paper, until the 22nd or 23rd, and even then I heard of it by mere accident from some gentlemen. I must confess that my astonishment was great. Had I then been in a convalescent state, I should certainly have adopted that line of conduct which candour will ever pursue. I would voluntarily have requested to have been admitted at your lordships bar, and then I would have ingenuously explained in the simple language of truth, the situation of my health, and my ignorance of the business; I should have then avowed what I now do—my innocence in point of fact—my guilt in point of responsibility.*

Captain Johnston begs that their lordships will allow this to be entered, in the minutes of the records of the court.

(Signed) W. JOHNSTON.

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* From a memorial presented by captain Johnston, to the first division of the court of session, and dated March 1, 1817, I extract the following passage relating to this affair:

"The complainer also thought proper to refer to some proceedings which were instituted against the memorialist, twenty-four years ago, on account of a publication in a newspaper, which he at that time conducted, which gave an unbecoming and incorrect account of some proceedings in the court of justiciary. The memorialist was there legally responsible as principal, being publisher of the newspaper, although, from bad health at the time, he was entirely ignorant of the matter, and was not able to discover who was the author of the paragraph. The memorialist, in these circumstances, was subjected to the displeasure of the Court, and in consequence of his legal responsibility, suffered imprisonment, which, from the situation in which he then stood was attended with great patrimonial loss, and rendered doubly severe from bad health. The real author of the paragraph kept himself concealed for eighteen years, and confessed the circumstance to the memorialist about six years ago. The memorialist has stated that circumstance, because the mention of that case might, to those who are ignorant of the circumstances, attach a degree of blame to him, which he no way merits."

Curia, &c.—15th February, 1793.

William Johnston, designed in the preceding sederunt, again sisted himself at the bar; and in consequence of the order of court of yesterday's date, Simon Drummond, printer in Edinburgh, sisted himself at the bar likewise; and he being examined and interrogated, declares that he received instructions from Mr. William Johnston, publisher of the Edinburgh Gazetteer, to superintend the publication of said paper, from some time in the month of December last, for the space of twelve months; declares, That he accordingly did superintend the publication of said newspaper during the month of January last; declares in particular, That he did superintend the publication of the Edinburgh Gazetteer, dated Tuesday, January 15th 1793; a copy of which has been now shown to him, and is subscribed by the declarant, and the lord president of the court, as relative hereto: That for three or four weeks before, at the time, and sometime subsequent to the publication of said Gazetteer of the 15th of January, the declarant was very much indisposed in bodily health. Declares, That he perfectly recollects the insertion of a passage in said paper, beginning 'High Court of 'Justiciary,' and giving an account of what was said to have happened at a trial before that court; and being interrogated whether or not he has the manuscript from which that paragraph was printed; declares he has it not, nor does he know what has become of it; that papers intended to be inserted in said newspaper, are sometimes put into a slit in the door at which there is a box, and sometimes given into the office itself. That in which of these ways the manuscript above mentioned came into the office, or in what way it so came, the declarant cannot say, as it came to the office in his absence as he presumes; and he found said manuscript among other packets, which had been sent to the office, and were designed for publication.—That the declarant cannot say, whether he read the whole of said manuscript, but that he read part of it; and to the best of his recollection, that part which contains an account of the depositions of the witnesses. That he then put said manuscript into a bag with other papers. That said manuscript was taken from the said bag by a boy of the name of M'Lay, then employed in the office of Grant and Moir, in which printing-office the Gazetteer was then printed, and a considerable part of said manuscript was taken off in types, which were sett or composed before the declarant knew of its being so done. That the declarant did not read, nor hear read the above part of what had been so composed. That he does not recollect, whether he read or heard read, the whole of what remained of said passage after it was composed, but remembers that he read that part of it which contains the depositions of the witnesses, which he had formerly read in the manuscript, and knew it to be the same with what he had so read from the manuscript. That the declarant after the whole of the said passage, which describes certain proceedings as having passed at said trial, was composed, dictated the five last lines* in the said column which lines begin "the great pressure," and end with the word "business." That the declarant cannot be positive of his having dictated as above; but, to the best of his recollection he did so. That whilst the types were setting, or after they were sett, but befor the paper was printed, several persons came into the office, and by their accounts of what had passed at the trial, confirmed what the declarant had read as above mentioned. That John Moir, printer in Edinburgh, corrected the typographical errors in the proof copy of the passage above alluded to. Declares, That he cannot assign any particular reason for believing that the above-mentioned manuscript is not now in existence, but supposes it may have been destroyed from the general waste which often occurs in printing-offices, where there are such a number of boys; but this he can say, that said manuscript has not to his knowledge been destroyed, to prevent its being produced here. Declares, That he did not know the hand-writing of said manuscript, nor at the time it was perused as above, did he suspect by whom it had been written. Declares, That he thinks he composed, that is, sett the types of some part of the above passage; and he believes it is that part in which Huxter is mentioned. All which he declares to be truth.

(Signed) S. Drummond.
Alex. Murray.

Thereafter his majesty's advocate represented, That from the foregoing declaration emitted by the said Simon Drummond, it occurred to him, that he was guilty of a considerable degree of criminality, respecting the publication now the subject of inquiry, and therefore, he considered it to be his duty to move their lordships, to have him committed to prison, till their lordships further pleasure should be known.

(Signed) R. Dundas.

The lords commissioners of justiciary having taken into consideration the said declaration with the foregoing motion, they adjourn the consideration of this matter till Tuesday next, at two o'clock afternoon in this place, and in the meantime, ordain the said Simon Drummond to be committed prisoner to the Tolbooth of Edinburgh, therein to be detained till that time. And ordain the before-mentioned William Johnston, likewise to sist himself at the said time.

(Signed) Alex. Murray, I. P. D.

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* See them *antè*, p. 46, *note*.

Thereafter there was presented to the said lords a petition in the name of and subscribed by the said Simon Drummond,

Humbly shewing; That a warrant having been granted by the Court, for committing the petitioner to the Tolbooth of Edinburgh, therein to remain till Tuesday next at two o'clock afternoon, upon a charge made against him by his majesty's advocate, as being concerned in the inserting an account of the trial of Morton, Anderson, and Craig, in the Edinburgh Gazetteer:

That the petitioner is at present in a very weak state of health, and his being confined in prison might be attended with considerable danger, And as the offence with which he is charged appears to him a bailable one, he therefore makes this application to their lordships to be admitted to bail. Praying therefore, it might please their lordships to consider the petitioner's case, to admit him to bail, and to modify the extent of the bail bond, and upon his finding sufficient caution and surety acted in the books of adjournal, under such penalty as their lordships shall think fit, for his appearance at the bar, at the time specified in the warrant of commitment, and all other diets of court, to grant warrant for setting the petitioner at liberty.

The lords commissioners of justiciary having considered the foregoing petition, find that the petitioner may be admitted to bail; and, in this case modifies the bail to two thousand merks Scots, and upon the petitioner's finding sufficient caution and surety acted in the books of adjournal under that penalty, that he shall appear at the time specified in the warrant of commitment, and whole after diets of court, grant warrant for setting him at liberty.

(Signed) ALEX. MURRAY, I. P. D.

Curia, &c. 19th *Feb.*, 1793.

William Johnston publisher of the Edinburgh Gazetteer, and Simon Drummond printer in Edinburgh, sisted themselves at the bar in obedience to a former order of court.

Mr. *C. Hope*, advocate, appeared as counsel for the said Simon Drummond. The said Simon Drummond represented, that he wished to have his former declaration emitted before this Court read over to him, and to be allowed to make a further declaration, and some corrections of what he had formerly declared.

The said declaration being accordingly read over to him, he emitted the following declaration:

The said Simon Drummond being accordingly examined and interrogated, declares, That the time at which he engaged with Mr. Johnston to superintend the publication of the Gazetteer, as mentioned in his former declaration, was on the evening of the 19th day of December last. Declares, That he cannot be positive as to the name of the boy who took the manuscript of the passage mentioned in his former declaration from the bag, though he has in said declaration called him M'Lay. And the former declarations emitted by captain Johnston, and the paper given in by him to court, intituled, 'Apology, &c.,' being at the declarant's own desire read over to him; he of himself declares, That till such time as captain Johnston was served with an order to attend this Court, the declarant never received any particular instructions from captain Johnston as to the conduct of the Gazetteer, except not to insert any-thing that was libellous, that is, what he the declarant might himself conceive to be a libel, and so far was the declarant from being restrained in other particulars, that he remembers to have sent some papers enclosed in a packet to captain Johnston, concerning the publication of which the declarant doubted, and captain Johnston returned said packet to the declarant unopened, with a verbal message that he might do as he pleased. Declares, That it was the declarant's invariable practice, as soon as a complete printed copy of the Gazetteer was cast off, to send it to captain Johnston's house in Frederic street, by one of the boys in the office, and to wait upon the captain next day after the publication of the Gazetteer, and to talk over with him what had been contained in the publication of the preceding day. That he recollects accordingly that he waited on captain Johnston the day after the publication of the Gazetteer, dated the 15th of January last, and carried a copy of said Gazetteer alongst with him; and remembers particularly to have mentioned to the captain, that as there was an officer reflected on in the passage contained in said Gazetteer, which passage gives an account of the proceedings before the high court of justiciary, he the declarant was afraid that said officer might call at the printing-office. That the declarant read over to captain Johnston that part of said passage which begins 'We forbear making any comment,' and ends with the words 'influence the minds 'of soldiers.'* That upon this captain Johnston said to the declarant, 'If any officers 'call at the office, send them to me, and I 'will give them any satisfaction they choose, 'as soon as my eye is able to face the sun.' That what is above declared so happened on the forenoon of the 16th of January last between ten and twelve o'clock, but the declarant cannot be positive as to the precise hour. That there was no person present with captain Johnston and the declarant at the above conversation and reading, except captain Johnston's son, who is a young boy. Declares, That since the above-mentioned passage was published, the declarant has had repeated conversations with captain Johnston, as to the account

* See this passage of the paper complained of *antè*, p. 46, *note*.

given in said passage of the proceedings before the high court of justiciary; and in particular captain Johnston asked the declarant if there were any witnesses who could prove the truth of the account given in said passage of said proceedings, to which the declarant answered, that he understood there were. That the declarant was desired by captain Johnston to make inquiries after witnesses who could prove these facts; and the declarant accordingly did so; and in particular found two or more persons who said that a witness, as the deponent thinks a boy called Smith, belonging to the regiment in the Castle, had, after he was examined before the Court, gone to the Castle, got his dinner, and again returned to the outer house where the other witnesses were inclosed, where he retailed to them what he had swore to in presence of the Court. That the above conversations with captain Johnston, happened some of them before, and some of them after captain Johnston was cited to appear before this Court. That the declarant before such citation, remembers to have informed captain Johnston, that the accounts given in said passage were confirmed by people who came into the office as mentioned in his former declaration, that the declarant had been informed of the particulars relating to said boy, Smith, before said citation, and had told captain Johnston of it, but it was after said citation that the captain gave the declarant particular instructions to inquire after witnesses to that fact. Declares, That he now recollects that he had read that part of the passage which reflects as to the boy aged fourteen, and the officer placing himself opposite to the witnesses, before the types were sett, that is, in the manuscript. Declares that he remembers to have mentioned to acquaintances the conversations he had with captain Johnston on the 16th of January last. Declares, That he has continued in captain Johnston's employment down to the publication of the Gazetteer of this day. All which he declares to be truth. And further declares That captain Johnston, on the 16th of January last, approved of that part of the passage so often above-mentioned, which the declarant then read to him as above, and this he also declares to be truth.

(Signed) S. Drummond.
Alex. Murray, I. P. D.

Continued till the 28d day of Feb. 1793.

Curia, &c. 23d February, 1793.

The which day William Johnston, publisher of the Edinburgh Gazetteer. — And Simon Drummond printer in Edinburgh, sisted themselves at the bar in obedience to a former order of Court.

Pror's for the public Prosecutor, Robert Dundas, esq. his majesty's advocate; and Mr. *Robert Blair,* advocate, his majesty's solicitor general.

Pror's for Mr. Johnston, Mr. Alexander Wight, advocate; and for Simon Drummond, Mr. Charles Hope, advocate.

Mr. *Hope* as counsel for the said Simon Drummond represented, that no proceedings could be had against his client upon the matter now at issue, but that he fell to be *simpliciter* dismissed from the bar. That it would occur to their lordships, that he stood in a very different situation from Mr. Johnston the other panel. That Mr. Johnston was accused by the public prosecutor of a very heavy offence offered against this high court, in the publication now under consideration, and he was accordingly sisted at the bar to answer that charge. That in the course of the proceedings Drummond was called upon for the special purpose of fixing guilt upon Mr. Johnston, and such being the case, he is here in the precise situation of a witness called by the public prosecutor, and has given his testimony accordingly. Now it is well known, in the practice of this Court, that a person being once adduced as an evidence, can never afterwards be brought forward as a panel for the identical crime which is the subject of inquiry. That it would occur to their lordships, that this was a matter of the utmost consequence to the criminal proceedings of this country, and therefore he hoped Mr. Drummond would instantly be dismissed from the bar.

Advocatus answered, that the objection now stated in bar of proceedings, proceeds entirely upon a mistake, as appears from the records of court, and the whole circumstances of the case. That Drummond was by no means called upon as an evidence against Mr. Johnston, or for the purpose of fixing guilt upon him. That after Mr. Johnston was accused, had been sisted at the bar, been heard upon his defence, and had emitted a first and second declaration, it occurred to the court, that from Mr. Johnston's declarations, it would be proper that Mr. Drummond should be sisted at the bar, and an order was given for that purpose; Mr. Drummond accordingly appeared, and emitted a long declaration, after which it occurred to him, in his capacity of public prosecutor that a considerable degree of criminality respecting the said publication fell on Mr. Drummond, and therefore he considered it to be his duty to move the Court for having him committed, which was done accordingly. At next sederunt Mr. Drummond applied to the Court to emit a farther declaration, which he did in the character of a panel, and after he had been accused by the public prosecutor as said is. That this being the fact, there is not the shadow of relevancy in the objection; he is now in the character of a panel under a formal accusation, and never was brought forward as a witness against Mr. Johnston, and therefore the objection would fall to be repelled.

The lords commissioners of justiciary having considered the foregoing objection offered

in bar of proceedings against Simon Drummond, with the answer thereto—They repel the objection, in respect Simon Drummond was called before the Court as a party to answer for himself, not as a witness against William Johnston.

(Signed) ALEXANDER MURRAY I. P. D.

Mr. *Alexander Wight*, on the part of the said William Johnston, and Mr. Charles Hope, on the part of the said Simon Drummond were then heard at great length.

Whereupon the Court having asked the said William Johnston and Simon Drummond whether they wished to be allowed a proof of any farther facts and circumstances now stated, and they having declared that they did not desire any further proof but rested the matter upon the evidence now before the Court; the following judgment was pronounced.—

The lords commissioners of justiciary having taken into consideration the publication in the newspaper intituled, "The Edinburgh Gazetteer," of date the 15th day of January last, pretending to give an account of the trial of John Morton and others, tried and convicted before this Court, with declarations emitted by the said William Johnston, and paper given in by him intituled "substance of capt. Johnston's apology," as also the declarations emitted by the said Simon Drummond; and having fully heard parties and their procurators, and that they have declined to adduce any further evidence; they find that the said publication is a false and slanderous representation of the proceedings in the said trial, and a gross indignity offered to this high Court, calculated to create groundless jealousies, and doubts of the due administration of justice by the supreme criminal Court of this part of the United Kingdom. That the said William Johnston, proprietor and publisher of the said newspaper, and the said Simon Drummond, conductor and printer thereof, are guilty art and part of printing and publishing the false and slanderous representation aforesaid. Therefore the said lords discern and adjudge the said William Johnston and Simon Drummond to be carried from the bar; the said William Johnston to the Tolbooth of Canongate of Edinburgh, and the said Simon Drummond to the Tolbooth of Edinburgh, therein to be detained for the space of three months from this date, and thereafter, till they find sufficient caution and surety acted in the books of adjournal, in manner following for their good behaviour for the space of three years from the time of their liberation respective viz. the said William Johnston by himself with two cautioners for the sum and under the penalty of five hundred pounds sterling; and the said Simon Drummond by himself with two cautioners for the sum and under the penalty of one hundred pounds sterling; and upon elapsing of the said period of imprisonment, and finding caution in manner foresaid grant warrant to and ordain the magistrates of Edinburgh and Canongate, and keepers of their prisons, to set them at liberty.

(Signed) ALEXANDER MURRAY, I. P. D.

Respecting this case see Mr. Hume's observations inserted in Vol. 19, p. 1340 of this Collection.

In the year 1794, proceedings were instituted against captain Johnston, which, being closely connected with this prosecution are here subjoined.

Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis domo de Edinburgh, vicessimo die Januarii, millesimo septingentesimo et nonagesimo quarto, per honorabiles viros Robertum Mac Queen de Braxfield, dominum justiciarium clericum, dominum Gulielmum Nairne de Dunsinan, baronetum, et Alexandrum Abercromby de Abercromby, dominos commissionarios justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

THE which day there was presented to the said lords a petition and complaint in the name of his Majesty's advocate, and subscribed by Mr. John Burnett, advocate depute.—Shewing, that in the month of January 1793, the petitioner brought to trial before your lordships, John Morton, James Anderson, and Malcolm Craig, all journeymen printers, for the crime of sedition; and they having been convicted by an unanimous verdict, received sentence accordingly.

That upon the 15th of the said month, of January, there appeared in an Edinburgh newspaper, intituled "The Edinburgh Gazetteer," an account of the trial of the said Morton, Anderson, and Craig, imputing partiality and injustice to the Court in the course of that trial.

Your petitioner felt himself called upon to state to your lordships, that he considered the said account or publication to be clearly and evidently calculated to lessen the regard which the people of this country owe to the supreme criminal Court; and that as it appeared to him, in its whole tendency, to afford a precedent highly dangerous to the constitution, he requested your lordships attention to it; and as William Johnston, esq., residing in North Frederick-street, Edinburgh, had avowed himself both the principal proprietor and conductor of the said newspaper, your petitioner submitted, that you would take into your immediate and serious consideration, a matter which concerned the general welfare of the country.

Upon this representation your lordships of this date [Jan. 25, 1793] made an order and

appointment upon the said William Johnston to sist himself personally in court upon the 29th of the said month.

In consequence of this order, a long investigation, and a variety of proceedings, took place before your lordships, unnecessary to be here particularly recited; the result of which was, that your lordships, of this date [Feb. 3, 1793], found the publication a false and slanderous representation of the proceedings in the said trial, and a gross indignity offered to the Court, calculated to create groundless jealousies and doubts of the due administration of justice by the supreme criminal court of this part of the united kingdom, Found, That the said William Johnston, as proprietor and publisher of the said newspaper, was guilty art and part, of printing and publishing the false and slanderous representation aforesaid; therefore, you decerned and ordained the said William Johnston to be carried from the bar to the Tolbooth of Canongate, therein to be detained for the space of three months from that date, " and thereafter until he should find sufficient caution and surety, acted in the books of adjournal, for his good behaviour for the space of three years from the day of his liberation, himself, with two cautioners, for the sum, and under the penalty, of five hundred pounds sterling." And, upon elapsing of the said period of imprisonment, and finding caution in manner aforesaid, your lordships granted warrant for his liberation. All which proceedings appear from the records of Court.

That the said William Johnston having undergone the said imprisonment, he with Dr. Francis Home, physician in Edinburgh, and James Campbell, writer to the signet, as cautioners and sureties, acted in the books of adjournal with him, bound and obliged themselves, conjunctly and severally, their heirs, executors, and successors, that he the said William Johnston, " should have and maintain a good behaviour for the space of three years, from the 23d day of May instant (1793) under the penalty of five hundred pounds sterling, in terms of and conform to a sentence of the high court of justiciary, pronounced against him the said William Johnston, upon the 23d day of February last." As the said bond of caution, lodged with your lordships clerks, bears, that the said bond having been accepted, and a certificate of the said William Johnston having obtempered that part of the sentence awarded against him having been given, he was accordingly liberated from prison.

The petitioner had little doubt that these proceedings, and the severe, but just and proper, censure inflicted upon Mr. Johnston by your lordships would have insured his good behaviour to the public at least for the period mentioned in the sentence. In this, however, he has been mistaken: for he is sorry to say, from certain proceedings which have lately been laid before him in his character of public prosecutor, he finds himself called upon, in discharge of the official duty which he owes to the public, to state to your lordships such facts and circumstances respecting the conduct and behaviour of the said William Johnston, as, in the petitioner's apprehension, are of such a nature and tendency as to forfeit the bond of caution granted for his good behaviour. Your lordships need hardly be informed, as the matter has been so lately and so frequently under the consideration of the Court, that upon the 29th day of October last, a number of persons, styling themselves a general convention of the Friends of the People, assembled in a mason lodge in Blackfriars Wynd of this city; and though their proceedings were at first conceived, or at least veiled, under the pretext of applying for a reform in parliament in a constitutional manner, yet it has been since discovered that the purpose of their meeting was in truth of a most dangerous and seditious tendency, and obviously calculated for the purpose of contemning and resisting the authority of the legislature, and inflaming the minds of the people against the constitution and government of the country.

From the written evidence to be afterwards stated, it already appears that Mr. Johnston considered this meeting in the light which the complainer now states it, and was abundantly aware both of the tendency of the meeting itself as hostile to the public peace, and that his attendance in, or having any connexion with it, would infallibly subject him and his sureties in a forfeiture of the penalty contained in the aforesaid bond.

This notwithstanding, he appears to have corresponded with a person of the name of William Skirving, who has, within these few days, been tried and convicted by a jury before your lordships of the crime of sedition, for accession to such meeting, on the subject of its future conduct and proceedings; and to have taken upon himself a very active share in directing the said Skirving, as to the manner in which such meeting or convention was to proceed. And though he appears, from the said written evidence, to have been aware of the criminality of his conduct in so doing, and to have at first declined being a member of, or appearing in, that convention; yet he nevertheless ventured, of this date [Oct. 31, 1793] to attend one of the meetings of said convention, as a visitor, to have taken a part in their debates, and to have countenanced, and encouraged them in their proceedings.

The above mentioned William Skirving having been apprehended, and his papers seized, there was found in his possession, a scroll of the minutes of this meeting or convention, herewith produced. And a question having occurred among them, as to the propriety of petitioning the king or the house of commons, upon certain topics unnecessary to be here mentioned, these minutes bear, that " captain Johnston having come in as a visi-

†

tor, the rev. Mr. Donaldson moved, that the captain's opinion should be had upon the question; and the convention having, upon a motion by the depute secretary, waved the regulation excluding visitors from speaking, captain Johnston expressed his sense of the compliment paid him, and assured them of the continuance of his steady zeal in the cause of reform, but assigned a very satisfactory reason for not taking any hand at present in the business before them." It appears from the minutes, that the debate then proceeded: but near the conclusion of it, captain Johnston seems to have altered his resolution, the minutes bearing, "That captain Johnston at last rose, and made a short speech, and strongly recommended unanimity, but expressing it as his decided opinon, that it was both illegal and improper to petition the king, and that such a step would actually ruin the cause."

This meeting or general convention, as above described, broke up in a day or two thereafter. But several seditious and evil disposed persons, having arrived from England, for the purpose, it would seem, of attending it; the above mentioned William Skirving circulated advertisements for calling the said meeting together a second time, which accordingly met upon the 19th of November last, and continued to sit daily from thence forward, till the 5th of December last, when their conduct and proceedings became of so flagrant a nature, that the ringleaders were taken into custody, and their meetings dispersed and prohibited in future, by the authority of the proper magistrate. The petitioner is entitled to term the second meeting highly seditious, because two of the ringleaders, Skirving and Margarot, have within these few days been, on account of their attendance and accession thereto, convicted of sedition, by two unanimous verdicts of their country.

It appears from the minutes of this last meeting, found in the possession of Skirving, their secretary, that captain Johnston had, as far down as the 30th of November, or as it is termed in the minutes, "eleventh day's sitting," again been present in it, and had taken an active part in its proceedings. The minutes bearing: "It was moved that captain Johnston should report some circumstances to the convention; for which purpose the house resolved itself into a committee, when he read an account of the trial and sentence of D. Holt, for reprinting the duke of Richmond's and Mr. Pitt's resolution for a parliamentary reform; after which, the chairmen being replaced, the secretary moved that captain Johnston should be allowed the honours of the sitting."

The petitioner submits that this conduct of Mr. Johnston was highly aggravated, not only by the consciousness, which he appears to have all along felt, of the impropriety of his behaviour, but that, on this last occasion, the meeting or convention, had by the change of its name, the form of its procedure, the nature of the motions made, and the purport of the debates and harangues, which took place in it, clearly and unequivocally proved the seditious, nay treasonable nature of its proceedings; and had previously demonstrated to the world that a reform in parliament was merely a pretext, under which was hardly concealed a design of subverting the constitution, and resisting the legislative authority of the state.

The authenticity of the above-mentioned minutes, the petitioner will establish by the most satisfactory evidence. Four letters, holograph of Mr. Johnston, three of which are addressed to the above-mentioned Skirving, and the fourth to Mr. Scott, or Mr. Ross, the publishers of the Edinburgh Gazetteer, are herewith produced. As also a copy of a circular letter by the above-mentioned William Skirving, wrote, it would seem, in consequence of the suggestion and directions, in one of the above-mentioned letters to him from the said William Johnston; and of all which copies are annexed to this complaint by way of appendix. The petitioner will likewise corroborate and support the above-mentioned written evidence, as well as the whole other facts and circumstances charged against Mr. Johnston, by the testimonies of these witnesses, whose names are annexed to this petition and complaint: these being established, the petitioner cannot entertain a doubt of your lordships being of opinion, that the said William Johnston has forfeited his bond of caution, and that you will declare so accordingly; and grant warrant to, and ordain the clerks of court to proceed in diligence in common form against the said William Johnston, and the said Doctor Francis Home, and James Campbell, as his sureties, for recovery of the penalty of 500*l.* sterling therein contained, to be disposed of as to your lordships shall seem meet.

Your petitioner subjoins a list of witnesses and written evidence, by which the foregoing facts are to be proved, if the same shall be denied by the said William Johnston and his cautioners, in order that they may be sufficiently apprized of the nature of the evidence, to be adduced in support of this complaint.

May it therefore please your lordships to ordain this petition and complaint, with the list of witnesses, and written evidence hereto subjoined, to be served upon the said William Johnston, and the said Dr. Francis Home, and James Campbell, and to appoint them to give in answers thereto, if they any have, within such time as your lordships shall think proper; and if the facts and circumstances herein set forth shall be denied, to grant warrant for letters of diligence, at the petitioner's instance, for citing the witnesses for proving the same; and, upon the said facts and circumstances being established, to find, that the bond of caution, granted for the good behaviour of the said William Johnston, is forfeited; and to grant

warrant to the clerk of court to proceed in diligence against him and his sureties, for recovery of the penalty therein contained, to be disposed of in such manner as your lordships may think proper. And, lastly, to make such farther order as to your lordships shall seem meet, for ensuring the good behaviour of the said William Johnston, for the period specified in his sentence.*

According to justice, &c.

JOHN BURNETT, A. D.

On this petition and complaint, the following interlocutor was pronounced by the Court:

Edinburgh, 30th January, 1794.

The lord justice clerk, and lords commissioners of justiciary, having considered the foregoing petition and complaint, they ordain the same to be served upon the said William Johnston, doctor Francis Home, and James Campbell, by delivering to each of them a full copy thereof, of the list of witnesses, and written evidence, thereto subjoined, and of this deliverance thereon; and ordain them to print and give in answers thereto within fourteen days after service; and the said William Johnston to sist himself personally at the bar of this court upon the 10th day of February next, with certification. And appoint this complaint, with the list subjoined, to be printed and given in with the answers.

ROBERT M'QUEEN, I. P. D.

6th February, 1794.

There was this day present to the said lords, a petition in the names of the said William Johnston, esq., Dr. Francis Home, and Mr. James Campbell, writer to the Signet, and subscribed by the hon. Henry Erskine, dean of faculty, their procurator, praying it might please their lordships to allow the petitioners fourteen days to print and give in answers to the said petition; and to appoint

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The following are the documents subjoined to the Petition and Complaint.

* LETTER,—*Mr. Johnston to Mr. William Skirving.*

Desirous as I am, that the proceedings of the approaching convention of delegates may be carried on with the utmost solemnity and regularity; I flatter myself you will forgive my taking the liberty of addressing you on the subject.

You cannot but be sensible, that the greatest satisfaction which the enemies of reform could feel, would be to see disunion among the Friends of the People,—avoid the rock. I was told yesterday by Mr. Miller, the advocate, that you had already denounced lord Lauderdale: I assured him it was a mistake; that he had been misinformed,—that no such denunciation had taken place; and that I had too high an opinion of the spirit and good sense of our friends, than to think they would *even condescend* to notice his lordship in any manner whatever; that the advocates for our natural and constitutional rights, saw nothing in any of the boasted opinions of such Aristocrats, than *party principles;* that they looked to principles alone, not to any one man or set of men.

I am inclined to think, from the conversation I held with Mr. Miller, that an industrious rumour had been purposely circulated, to make your meeting declare hostilities to every man who would not go the length of *annual parliaments, and universal right of suffrage.* I am perfectly aware that it would be a most desirable object, to have an unanimity in the kingdom on these two specific principles; but I should not think it advisable, by any means, to throw censure on any individual, although his mind may not be made up on so extensive and deep a reformation. In the immature state in which the societies are at present, it would be infinitely more politic to *soften,* than to exasperate by hasty denunciations.—If you do denounce, from that moment you will be considered as pursuing a similar conduct with the *Jacobin clubs in France;* and instead of bringing about a constitutional redress of grievances, that you mean to mark characters for the intent of destroying them. My reflections are constantly turned on this interesting subject. I am convinced that we have the ball at our feet, if we manage with common address; but should we proceed to *violent denunciations,* the next course to be adopted will be *violent measures;*—both ought to be avoided. If I might privately suggest a rule for your conduct, I would earnestly recommend to you, first, an union of sentiment. 2dly, *A solemn league* with the delegates, never to shrink or be deterred from a pursuit, in so glorious an undertaking as a radical reform. 3dly, To adopt a mode for holding a *monthly* correspondence in the business. 4thly, A determination to manifest to the whole country, an orderly but a firm conduct. 5thly, As a rule never to be departed from, to expunge those persons from the societies who shall be found guilty of riotous and disorderly proceedings—if some such resolution is not brought forward, government will contrive to introduce men among you, for the purpose of driving you into intemperate proceedings. You know, as well as any man can know, that there is a time when relaxation is the shrewdest policy—when vigour would be as impolitic, and so *vice versa.*

As I have observed already, I shall again repeat it—that as no man living is a more ardent advocate than myself to every principle, which will lead mankind to real and substantial happiness; and as no one measure can more bring that much wished for object into view, than a reform in the Commons, which will, when obtained, produce all that we can wish or want:—So am I at the same time equally convinced, that nothing will more insure success to the friends of

the petitioner, William Johnston, to sist himself at the bar on the 24th instead of the 10th day of February current, or on such other day as to their lordships should seem proper.

The lord justice clerk and lords commissioners of justiciary having considered the foregoing petition, and that his majesty's advocate has no objection to the delay prayed

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liberty, than *candour, firmness*, and constitutional integrity.—I am yours, &c. &c.

(Addressed) *Mr. William Skirving, Cowgate.*

Mr. Johnston to Mr. Skirving.

Dear Sir;—I am favoured with your's this moment—in answer to it, I shall once more take the liberty to remark to you, that my objections to the principle of *denunciation*, do not arise from any absurd apprehension of holding up the character of this or that man, however exalted his situation—all I meant to say, although I might have expressed myself obscurely, that however deserving of the *mark*, that *this* was not the *time*. The *steadiness* and moderation of the people, must bring these people to some avowed declaration of principles, how far they propose to go—and depend upon it, that it is from the *real Friends of the People*—the *tone* of these *party* men must be taken, and this must soon happen.—Policy, however, should now be our guide.—Coolness and inflexible perseverance will do the business.

My interest with those persons whom you mention, is such as I decline to use: I decline it, because I am finally of opinion, that it would be doing them too *much honour* to bestow a thought on such; and indeed I do not think they are of that *consequence*. I must honestly declare that I entertain a very poor opinion of the whole; I have sacrificed health, *friends*, and more money than I can afford, to a cause which I am ready to lay my life down to-morrow, to see obtained: my peculiar situation renders my attendance impossible,—you know it,—I hope the world knows it,—take my advice,—mind no body,—go on,—let *Magna Charta* and the *Bill of Rights* direct your conduct,—don't waste your time in weak and trifling debates—be dignified and constitutional.—Your's,

Monday 18. W. J.

(Addressed) *Mr. Skirving.*

Mr. Johnston to Mr. Skirving.

Sir;—I observe by the Gazetteer, that you have called another convention of delegates to assemble on Tuesday the 19th current. I dare say you will think with me, that this measure will create a good deal of bustle in the *higher orders*, and that every endeavour and almost every artifice, will be adopted to render it ineffectual. To avoid the tricks of *power*, I am inclined to suggest to you the propriety of writing yourself to the different societies, and inform them of the real circumstances which have occasioned a second delegation. By this mode you will secure, in the first place, a certain attendance; and, secondly, you will obviate the precarious uncertainty of the societies not taking up the utility of the business in a comprehensive point of view. I am of opinion, that the convention should be as full and as respectable as possible. The objects it must hold out to the country, of *annual parliaments and universal right of suffrage*, being of vast magnitude. The minds of the delegates ought to be made up on the subject, previous to their arrival, not merely to stifle an interesting animated debate on these measures, but to impress on the minds of all, the unanimity on such an occasion;—rely upon it—you will meet with many obstacles, but do not be daunted at what may follow,—look fully at the objects,—leave consequences to themselves: should any attempt be made, either to prevent the meeting or to make it contemptible, let us, as men, not forget that our intentions are honest; that we are the true friends to peace and good order, and are determined to pursue the glorious business with intrepid moderation, and constitutional dignity. I shall not sign my name but with the initials,

6th Nov. 1793. W. J.

(Addressed) *W. Skirving, Esq., Cowgate.*

Circular Letter by William Skirving.

Sir;—I have the satisfaction to inform you that the delegates from the societies in London have at length arrived in Edinburgh. Delegates from the other societies in England, and who are now upon the road, will soon also be here to wait upon the friends of the people, in order to establish an indissoluble fraternity between the two nations, and to adopt those measures which at this *awful period* may have a tendency to save the country.

Solemnly pledged as you are to a common and just cause, no hardship and no expense can be thought too great for you, while you are conscious that you are discharging your duty. With no propriety can you refuse to attend upon your brethren from England, who, at so much expense, and from so great a distance, have come to unite their affections and deliberations with you.

I feel it my duty, in coincidence with the sentiments of the general committee here, again to recall the societies by their delegates to this place. Every moment is precious, and delay is synonimous to treachery.

I expect, therefore, Sir, to have the honour of seeing you on the 19th current in the general convention of the delegates, in compliance with the public advertisement which I was bound to insert in my official capacity in the Gazetteer of yesterday, to which I intreat your particular attention.

If you cannot possibly attend, it will be proper to call the committee of your society to appoint one or two in your place. No exertion on the part of a friend should be wanting at this *important crisis* to render

for; they prorogate the time for the petitioners lodging their answers for fourteen days from this date, and ordain the petitioner, William Johnston, to sist himself at the bar upon Monday, the 24th day of Feb. instant.

(Signed) Robert M'Queen, I. P. D.

Answers were accordingly printed, but they do not appear upon record. They were as follows:

Answers, &c.

In making an answer to the petition and complaint exhibited against the respondent, at the instance of his majesty's advocate, the only question to which the respondent has to apply himself, is simply this, whether the particular facts set forth, and the writings therein founded upon, are sufficient to forfeit the bail-bond, by which the respondent and his cautioners stand bound for his good behaviour; which bond was granted by them in consequence of a sentence of this high court, on the 3d of February 1793?

It becomes necessary, therefore, for the respondent, 1st, To consider the nature and terms of the bail-bond itself; 2ndly, To take a view of the facts that are charged against him, as amounting to a forfeiture of this bond; and lastly, To endeavour to show your lordships that the facts charged, are insufficient to operate the forfeiture contended for by the public prosecutor.

The respondent, some time before the sentence of the Court above-mentioned, had engaged in the publication of a newspaper, called the Edinburgh Gazetteer, on which he laid out a considerable sum of money, promising himself a reasonable profit from the adventure.

It must occur to your lordships, without any assurance to that effect from the respondent, that it is no easy matter for the best intentioned and most accurate proprietor of a newspaper, in the hurry attending the publication, to prevent improper and offensive paragraphs from finding their way into a repository of so general a nature. At the same time, there can be no doubt that the responsibility for any thing that shall be therein inserted, necessarily attaches on the publisher. Unfortunately for the respondent (though he is conscious owing to no blame on his part), a paragraph of a very improper nature, animadverting upon certain proceedings of this Court, was put into the hands of the person who managed the detail of the publication for the respondent, and which was, without any knowledge or approbation of the respondent, at that time labouring under a severe indisposition, inserted in the Gazetteer.

The public prosecutor having felt it his duty to represent the matter to your lordships, the order of the Court mentioned in the petition, was served upon the respondent, who sisted himself accordingly at the bar of this court, upon the 29th of January 1793. The consequence was, that your lordships found the respondent was guilty, art and part, of publishing the passages complained of; and therefore decerned and ordained him to be carried from the bar to the Tolbooth of Canongate, therein to be detained for the space of three months from that date, 'and thereafter, until he should find sufficient 'caution and surety acted in the books of 'adjournal, for his good behaviour for the

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this convention still more respectable; and none who have the cause at heart, and discerns how much is at stake, will be remiss.

Let it be our ardent prayer to God that his wisdom may direct their measures, and that his benediction may attend the execution of them.—I have the honour to be, Sir, your most obedient servant,

William Skirving, Secy.

Edinburgh, Nov. 7, 1793.

P. S. Being well assured of your good will to the cause of reform, I have used the freedom to send you the above copy of the circular letter to the delegates from the various societies for this important business, hoping that you might be induced to use means to collect a few friends, in order to send up a delegate to the proposed general convention, which, if now duly honoured, may be the happy means of procuring peace to this distracted country, at least of preventing much of the calamity impending.

If you can procure a meeting in your town, though but of 5 or 6, to draw up a declaration in favour of universal suffrage in the election of ministers, magistrates, and legislatures, and to appoint one of your number to represent you at our meeting of the 19th current, it may soon procure you the thanks of all your fellow citizens, and at any rate must give you personal satisfaction, as tending to unite our country in the bond of fraternity, the chief resource of men in the day of evil. —In hopes of your patriotic exertions in the good cause, I am, &c.

Letter,—*Mr. Johnston to Mr. Scott, or Mr. Ross.*

I take the liberty of inclosing you a few resolutions hastily drawn up, which I am inclined to think ought, or something similar to them, to be adopted by the convention, to show its abhorrence of the conduct both of the judge and jury in the trial of Mr. Holt. I don't send you the resolutions as being perfect, but merely as a model.—Do with them as you think proper—shew them to Mr. Callender—at any rate, something you should do.—Can you procure me a copy of the Bill of Rights?—Why, through a false delicacy wait for Mr. Skirving? a public cause requires the active exertions of every man—and delicacy is out of the question.—Your's &c. &c.

W. J.

(Addressed) *Mr. Scott, or Mr. Ross.*

'space of three years from the day of his 'liberation, himself, with two cautioners, for 'the sum, and under the penalty of five hun-'dred pounds sterling.' And upon elapsing of the said period of imprisonment, and finding caution in manner foresaid, your lordships granted warrant for the respondent's liberation.

This sentence of your lordships called the respondent's most serious attention to the predicament in which he stood as proprietor of a newspaper, for every part of which he was responsible; with a view therefore, not only to relieve himself from any such risk in future, but to prevent his being, even ignorantly or inadvertently, the means of conveying to the public any thing that might be offensive or dangerous to the community, the respondent resolved to give up the concern, which he accordingly did at a very considerable loss to his family, as the continuation of the publication had been too short to allow him to get back the sums necessarily expended in the commencement of the work. A fair conveyance of the concern was accordingly made, and from that day to this, the respondent neither directly nor indirectly has had any connexion with the conduct of that paper. During the time the respondent had the conduct of the paper, he has the satisfaction to think, that although it was made the channel of communicating to the public the resolutions of various societies and descriptions of men on the subject of parliamentary reform, it cannot be found to have contained any thing of a seditious nature on that subject. Of this, no better evidence can be adduced than, that notwithstanding the laudable vigilance of the public prosecutor to suppress and punish every publication of a seditious tendency, no judicial measures were by him taken against the respondent, on account of any thing that appeared in that paper. And as it will not be supposed, that while the respondent was called before your lordships, for the offensive publication already mentioned, the public prosecutor would pass over any other irregularity that called for his animadversion, he humbly conceives, that he is entitled to avail himself of this conclusion to the fullest effect.

The respondent has no hesitation to acknowledge, that he is one of those whose opinion leads him to consider a moderate reform in the representation of the Commons in the British Parliament, upon principles congenial with the nature of our free and happy constitution, as an object of the greatest magnitude and importance to the happiness and prosperity of these kingdoms; while, on the other hand, no one can be more forward to reprobate the late proceedings of those rash and misguided persons, who, under the designation of the British Convention, have, by a variety of proceedings, highly unconstitutional and dangerous, brought into hazard, as far as it was in their power so to do, the very constitution which it is the object of a moderate and lawful reform to invigorate and preserve, and who have thereby subjected themselves to the punishment of the law.

The association here alluded to, it will be observed, had no existence at the time when, in consequence of the judgment of the Court, the respondent found caution for his good behaviour. A society of a very different nature, and under a different name, had formerly existed; the object of which was, by the legal mode of application to parliament, to obtain that constitutional reform in the representation of the Commons, which had, on several former occasions been adopted by many of the most respectable men in the nation; and had been repeatedly brought forward in parliament, not only by different members in their places, but even by some of those entrusted at the time with the highest offices in the state, and the most confidential situations in administration; particularly by the present first minister, who, both when in and out of office, brought forward in the House of Commons, motions to that effect, and in associations out of doors, formed for the express purpose of obtaining a parliamentary reform, gave the measure his countenance and support.

As mentioned in the petition, on the 29th of October 1793, a certain number of persons began to meet, under the designation of a general convention of the Friends of the People; and it is admitted in the complaint, that the object which they avowed, was an application to parliament for a reform in the representation of the Commons. On the supposition, that their object, as well as the means of pursuing it, were constitutional, the respondent would not have considered his inrolling himself as a member, to be a measure that would justly afford any argument for forfeiting his bail, as no man will pretend to say, that a person's exercising his constitutional privilege of concurring in a petition to parliament, praying for a reform in the representation of the Commons, could be construed to a breach of good behaviour, which could only arise from a breach of the law, tending to subject him to legal censure and punishment. The respondent, however, was perfectly aware, that when men are once met together, even on the most constitutional grounds, zeal may often get the better of discretion, and they may be tempted to concur in measures very different from their original intentions, and beyond the pale of law and the constitution; and that, even independent of any error on their part, they may be implicated in the rashness or criminality of others in their proceedings and meetings, where they themselves may not be present. These considerations, joined to the particular situation in which he stood, made the respondent resolve not to become a

member of any such society, at least till he should have a full opportunity of being satisfied, that their views were constitutional, and their proceedings legal and orderly.

The first charge made against the respondent, as a ground for forfeiting his bail-bond, is, his being present at one meeting of this society of the Friends of the People on the 29th October last; and if the charge is well founded, it must be on this ground, that something said by the respondent at that meeting was illegal and seditious, for it is admitted, that the subject of deliberation was a petition to parliament in favour of reform, than which nothing could be more legal and constitutional. It must have been in the sentiment expressed by the respondent, that any wrong existed. What the respondent is said to have expressed, is thus stated in the petition and complaint: "That captain Johnston at last rose and made a short speech, and strongly recommended unanimity, but expressing it as his decided opinion, that it was both illegal and improper to petition the king, and that *such a step would actually ruin the cause.*"

The words in Italics, the respondent has no recollection of having spoken; but taking the passage as it stands, he presumes to maintain, that it contains nothing more than what is perfectly warrantable. It is impossible seriously to deny, that to petition the king for a reform in one of the houses of parliament, would be in the highest degree unconstitutional: It is thought the learned prosecutor will scarcely refuse his assent to this proposition. And even as to the words which are imputed to the respondent, but which he cannot admit his having uttered; they are no more than an opinion, that an unconstitutional mode of pursuing a constitutional object, may be prejudicial to its success. The respondent is confident, therefore, that your lordships cannot entertain the most remote idea, that, taking the fact as charged, it imports the slightest degree of criminality against the respondent, and far less such a degree of misbehaviour, as to forfeit the bail-bond, which it is humbly thought, no conduct on the part of the respondent could do, that would not be sufficient to convict him of a crime, or at least to warrant a court of law, to bind him over for his good behaviour. That neither of these are the case with the fact now charged upon, the public prosecutor warrants the respondent to conclude, as not a single step whatever has been taken against any person who was present at that meeting, except Mr. Skirving, and being present at that meeting, was no part of what was laid to his charge; on the contrary, he was convicted on the proceedings of a totally different society, the British convention, who, instead of adopting the constitutional mode of petitioning parliament, totally disclaimed any such idea, and adopted measures, which have justly subjected both Mr. Skirving and others to the punishment of the law for sedition.

This convention, as mentioned in the petition, having broken up, the society known by the name of the British Convention came to be constituted. On the supposition, that its object was also a constitutional reform, the respondent does not conceive, that though he had become a member of it, it would have afforded any ground for forfeiting his bail-bond, as it would have involved no degree of criminality.

With regard to the character and sentiments of the persons who came from England to attend this meeting, the respondent was perfectly ignorant, and it was equally impossible for him to foresee the tone and conduct which the new society were to assume.

Mr. Skirving had been a member of the former society; he was understood to be principally concerned in the one about to be instituted; and the respondent being desirous, in confidence to communicate to him what occurred on the subject, he wrote him the letters annexed to the petition and complaint. The letters are unsigned, and it perhaps might be difficult for the public prosecutor, to prove them to be of the respondent's hand-writing. The respondent, however, considers it to be his duty, not to rest any of his defence upon a probable defect of probation, and he therefore readily admits the letters to have been written by him, and sent to Mr. Skirving, to whom they are addressed. It is upon those letters, that the second charge is founded, upon which the public prosecutor seeks to forfeit the respondent's bail-bond.

Before proceeding to consider the import of these letters, and how far they contain any thing criminal, the respondent begs leave to suggest a doubt, whether, as they are mere confidential communications to an individual, not intended for the public eye, and which do not even appear to have been communicated by Mr. Skirving to any person whatever, they would afford a ground for criminating the respondent, even to the effect concluded for, although they had contained exceptionable matter. The respondent, however, wishes by no means to shelter himself on any such ground, and he is humbly hopeful he has no occasion to avail himself of any such plea, as he trusts it will appear to your lordships, that, on a sound construction of these letters, they will not be found to contain any criminal matter, whatever gloss it may be possible to put upon particular passages taken by themselves, independent of the rest, and without regard to the evidence that arises from the proceedings of the societies with which the respondent was formerly connected, which were confined to the legal mode of obtaining a constitutional reform, viz. an application to parliament by petition.

In the first place, then, it falls to be inquired,

whether the merely entertaining an opinion in favour of annual parliaments, and universal right of suffrage, and of suggesting that to any individual as an object to be legitimately pursued through the medium of petitions to parliament be criminal, and sufficient to subject a party to legal censure or punishment? The respondent humbly conceives, that this question must be answered in the negative; whatever objections may lie against so very wide a reform in parliament as this, in point of political expediency, the respondent humbly conceives, that even that object may legally be suggested to parliament, if done in a proper and respectful manner; and he humbly conceives, that the judgments of your lordships against some of the members of the British convention, who have been convicted of sedition, were not founded upon their having met for the purpose of obtaining annual parliaments and general suffrage, but upon their having daringly and seditiously avowed their determination to obtain that object by means the most unconstitutional and illegal. Of the justice of this observation, the respondent can entertain no doubt, when he reflects, [that a nobleman of the highest rank in the kingdom, and now enjoying an office of the first trust and confidence under the king, published to the world, in the most unequivocal terms, his sentiments in favour of universal representation, without subjecting himself to any judicial accusation, or losing the favour and confidence of his sovereign. Petitions too, praying for a reform of the very same nature, were last session of parliament presented to and received by the House of Commons. Surely, therefore, the same opinion signified confidentially in a private letter to a single individual, and never communicated to the public, cannot be considered as fixing such criminality upon the respondent, as to subject him to so heavy a penalty as the forfeiture of a bond for so large a sum as that in question, however imprudent or ill founded the opinion itself may appear to be.

Nevertheless it is for your lordships to judge, whether, in any other part of the letters founded upon in the complaint, the respondent has been guilty of endeavouring to instigate, through the medium of Mr. Skirving the then intended convention to any illegal or seditious measures for obtaining this object. With great deference to the public prosecutor, he conceives, that neither the letters in general, nor those passages in particular, printed in italics, with a view no doubt to infer criminality, will warrant any such construction. It is true, they contain no express words recommending an adherence to the constitutional mode of petitioning parliament; but when taken, as they certainly must be, along with the respondent's sentiments in favour of that mode of proceeding, contained even in the words imputed to the respondent in the former convention, it must in justice be presumed, that every strong expression that these letters contain, with regard to the unanimity, firmness, and perseverance with which, in his opinion, the intended convention ought to proceed, must be construed to mean, persevering in that constitutional mode of application, in the only quarter from which the object could be constitutionally obtained

But it is necessary for the respondent to fatigue your lordships with a minute and critical investigation of the fair import of all those passages in the said letters, on which the public prosecutor seems to incline to lay stress. The letters are before your lordships, and on them, as a whole, your lordships will form your judgment. The respondent, however, must call your lordships particular attention to a few passages, which fully demonstrate, that in giving the advice these letters contain, the respondent had in view no deviation from the law and constitution. Thus in one letter he says, 'If you do denounce, from 'that moment you will be considered as pur- 'suing a similar conduct with the *Jacobin* 'clubs in *France*, and instead of bringing 'about a *constitutional* redress of grievances, 'that you mean to mark characters for the in- 'tent of destroying them.' In the same letter, 'He recommends a determination to manifest 'to the whole country an *orderly*, but firm 'conduct; and to expunge those persons from 'the societies who shall be found guilty of 'riotous and *disorderly* proceedings.' And in the close of the letter he says, 'That nothing 'will more insure success to the friends of li- 'berty, than candour, firmness, and *constitu- 'tional* integrity.'

In the next letter he says, 'Let *Magna* 'Charta and the *Bill of Rights* direct your 'conduct.' But unconstitutional proceeding, and a strict adherence to Magna Charta and the Bill of Rights are perfectly inconsistent; for these are the pillars on which undoubtedly rests the constitution itself; and the same letter concludes with these words: 'We are the 'true friends to *peace* and *good order*, and are 'determined to pursue the glorious business 'with intrepid *moderation* and *constitutional* 'dignity.'

The respondent is perfectly aware that it may be said, that nothing is more common than for persons to cloak the most seditious proceedings under an affected zeal for the law and constitution. In no case, however, is this a fair or just presumption, unless where the measures they recommend to pursue are, in themselves, inconsistent with both. It is a cloak too that can only be assumed in writings intended for the scrutinizing eyes of the public. Where such expressions, therefore, are used in a private and confidential correspondence, there is not the smallest room for presuming that they are employed for any delusive purpose. They must, therefore, be held as meant in their true and proper sense; and the respondent has no doubt that your lordships candour and justice will give him credit for the meaning that the words convey, as

the rest of the letters, however strongly expressed, contain no sentiment, or any advice, that may not bear a correspondent construction.

Although, therefore, the respondent heartily regrets that he should have entered into any communication with Mr. Skirving upon the subject, although he disapproves as much as any body of the illegal and seditious proceedings, in which that person, by a total deviation from his former professions, did afterwards engage; yet as at the date of those letters, those views, which afterwards came to light, could not be discovered by the respondent, he trusts that your lordships will be inclined to exculpate him from any illegal or seditious intention in this correspondence, which was finally closed before that infatuated body of men, styling themselves the British Convention, had even begun to meet. The public prosecutor has been pleased to annex to the petition and complaint, a circular letter said to have been written by Mr. Skirving in consequence, as is alleged of the respondent's suggestions and directions, contained in one of his letters. There is not, however, the smallest evidence, that the respondent ever saw or approved of that circular letter, and though he suggested in general terms, that a circular letter should be written, it is impossible to make him answerable for the contents of it; especially as it appears to be in a very different style from that pointed at in the respondent's letter, which is confined to a mere communication of the intended meeting. The respondent, therefore, is not under the necessity of attempting any vindication of the circular letter, seeing that whatever blame may be attached to it, it is impossible that any part of it can be thrown upon the respondent, farther than, independent thereof, can be imputed to him from his own letters to Mr. Skirving, upon which he trusts he has already satisfied your lordships, that however rash and ill-advised such a correspondence may appear to be, it cannot fix upon him any criminality sufficient to subject him to any penal consequences in the shape of a trial, and consequently cannot justly be made the ground for forfeiting his bail bond.

The only remaining charge is, the respondent's having been present at a meeting of the British Convention, his having read aloud upon that occasion, the trial and sentence of D. Holt, for reprinting the duke of Richmond's and Mr. Pitt's resolutions for a parliamentary reform, and having been allowed by the meeting, what they were pleased to call the honours of the sitting; and a particular stress appears to be laid upon this being the *eleventh* meeting of the convention; from which the respondent presumes, it is intended to be inferred, that he knew, and must have approved of all the former proceedings of the British Convention.

In point of fact, however, your lordships will be informed, that the British Convention, as they called themselves, had their first meeting on Tuesday the 19th of November last, in the evening, after which their meetings were regularly held in the evenings. At none of those meetings was the respondent present; nor is it charged, that he had any communication with members, by which he could know what proceedings had been held from time to time, nor had he any means of knowing this, except from the publication of their speeches and proceedings in the newspaper, called the Edinburgh Gazetteer. On the forenoon of the 30th of November, the respondent very rashly and improperly, as he acknowledges, was tempted by curiosity, to go for a few minutes into a meeting of one of the committees. There were there present a very few people; no business was done while the respondent was there, nor any resolutions made; the persons present were merely engaged in separate conversations with each other, when the respondent, who had taken up a newspaper, containing the trial and sentence of D. Holt, was desired by some person present to read it, which he accordingly did, without making any particular animadversions upon it, and he soon after left the meeting. If what is called the honours of the sitting were conferred upon him, of which he has no recollection, he cannot perceive how any absurdity of a meeting, of which he was no member, in the shape of an honour, which he neither asked nor accepted of, can be charged against him; and how, at any rate, such an absurdity can be reared up as a ground of crimination, unless the meeting had passed unconstitutional or seditious resolutions; in which case, such a ceremony, if accepted of by the respondent, might be construed into an accession, on his part, to such a resolution. But it has been already mentioned, that no resolution of any kind was passed; nor is the contrary charged in the complaint, far less any resolutions condescended upon to which the respondent's accession can be inferred.

Neither can it be said that the respondent, by being present at this meeting, became accessary to any of the former, and far less to any of the latter proceedings of this convention. Even though the respondent had been a member of the convention, it may be doubted how far he could be chargeable with an accession to their proceedings, unless in so far as he either expressly concurred in such proceedings, or was present when they were passed, without objecting to them. This must clearly be the idea of the public prosecutor himself; for although a great number of persons were present at the meetings, no measures have been taken against any of them, but such as actually concurred in resolutions of a criminal nature. At the same time, it would not impair the respondent's argument, although it should be your lordships opinion that every person inrolled a member of the convention, should be answerable for all their proceedings, whether

personally present or not; for supposing this to be the case, the respondent, who was no member, and who never was but at one committee meeting, where no resolution was passed, can in no view be criminated from any thing that passed, either at the previous or subsequent meetings.

It is material also for your lordships to be informed, that although the meeting at which the respondent was present is called the eleventh meeting of the convention, yet at that time their proceedings had only been published down to Saturday the 23rd of November. These resolutions appeared in the Gazetteer of the 26th, and no other paper was published till some days after the 30th, the day on which the respondent is charged to have been present at a meeting of the convention; and it will be particularly observed, that these proceedings, previous to the 23rd, which were all the respondent could possibly be acquainted with, contained none of those seditious resolutions for which some of its members have so properly been called to account.

The respondent, therefore, when he unguardedly went to that meeting, had it not in his power to know that any seditious measures had been adopted by the convention, or even that they had departed from the apparently constitutional footing on which it is admitted in the complaint they set out. On the contrary, the only resolutions which at that time had been published, were still holding out the measure of petitioning parliament, as appears by the speech of one of the members published in the Gazetteer of the 26th of November, which contains the whole resolutions which had been made public previously to the meeting at which the respondent is charged with having been present. In that speech the member proposes the petition to parliament to be rendered as respectable as possible by the number of names adhibited thereto. Although, therefore, it may be true, that between the 26th, when the Gazetteer containing the previous resolutions came out, and the 30th, the day on which the respondent was present at the committee meeting, seditious resolutions may have passed in the convention, yet of these the respondent was necessarily in ignorance, till several days after, when the next Gazetteer came out, and his presence at that meeting, therefore, can afford no reasonable presumption of his having approved, since he could not know of these proceedings. As therefore nothing was done of a criminal nature at the only meeting at which the respondent was present, and he had no connexion either more or less with any other meeting, he is humbly hopeful that your lordships will be satisfied, that this charge cannot amount to any such behaviour on the part of the respondent, as to warrant the forfeiture of the bail-bond in question.

On the whole, when your lordships reflect that the respondent has already suffered three months imprisonment, besides a heavy loss upon giving up the Gazetteer, in consequence of the former sentence of your lordships, and that however imprudent he may have been, in holding any communication with Mr. Skirving; that the respondent's letters, however unguardedly expressed, import nothing beyond a view to a constitutional reform in parliament by constitutional means, while the single meeting at which he was present, passed no illegal resolution, and the respondent was totally ignorant at this time, that any such resolutions had passed at any former meetings; he trusts that your lordships justice and humanity will lead you to be satisfied, that no cause has been shown for forfeiting the bail-bond; and he even flatters himself, that though a sense of his own duty, and a just regard for the public interest, induced the public prosecutor to make the present application, he will not be inclined, now that matters are explained, to regret that your lordships should dismiss the complaint. In respect whereof, &c. HENRY ERSKINE.

No further procedure took place, nor did captain Johnston sist himself in court.

592. Proceedings in the High Court of Justiciary at Edinburgh, against JAMES THOMSON CALLENDER, WALTER BERRY, and JAMES ROBERTSON, for Writing, Printing, and Publishing a Seditious Libel, January 28th, February 18th, 19th, 22nd, and March 18th: 33 GEORGE III. A. D. 1793.

Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis domo de Edinburgh, vicesimo octavo die Januarii, millesimo septingentesimo et nonagesimo tertio, per honorabiles viros Robertum Mac Queen de Braxfield, Dominum Justiciarium Clericum, Alexandrum Murray de Henderland, Davidem Rae de Eskgrove, Joannem Swinton de Swinton, Dominum Gulielmum Nairne de Dunsinan, baronetum, et Alexandrum Abercromby de Abercromby, Dominos Commissarios Justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

Intran.

Walter Berry, bookseller, South Bridge Street, Edinburgh; and

James Robertson, bookseller there, and printer in the Horsewynd of Edinburgh —Panels.

INDICTED and accused at the instance of Robert Dundas, esquire, of Arniston, his majesty's advocate, for his majesty's interest, for the crimes of writing, printing, publishing, and circulating a seditious pamphlet, in manner mentioned in the criminal libel raised thereanent; bearing, that albeit, by the laws of this and all other well governed realms, the wickedly and feloniously writing, and printing, or causing to be written and printed any seditious pamphlet, containing false, wicked, and seditious assertions, calculated to degrade and bring into contempt our present happy system of government, and withdraw therefrom the confidence and affection of our subjects; as also, the wickedly and feloniously publishing, circulating, and selling, any such wicked and seditious pamphlet when so printed, or the causing the same to be published, circulated, and sold, among the inhabitants of this country, are crimes of an heinous nature, dangerous to the public peace and severely punishable: Yet true it is, and of verity, that the saids James Thomson Callender, Walter Berry, and James Robertson, above complained upon, have presumed to commit and are guilty of all and each, or one or other of the aforesaid crimes, actors or art and part: in so far as, upon one or other of the days of the month of May, in the year one thousand seven hundred and ninety-two, or upon some other day in that year to the public prosecutor unknown, the said James Thomson Callender did at Edinburgh, in the county of Edinburgh, or at some other place to the public prosecutor unknown, wickedly and feloniously compose and write, or cause to be composed and written a seditious pamphlet, intituled, 'The Political Progress of Great Britain, or an Impartial Account of the principal Abuses in the Government of this Country, from the Revolution in 1688. The whole tending to prove the ruinous consequences of the Popular System of War and Conquest—the World's Mad Business. Part 1st.' Which pamphlet is of a wicked tendency, and contains the following, among other wicked and seditious passages, (pages nineteenth and twentieth of the printed copies of said pamphlet): "There is a cant expression in this country, that our government, is deservedly, 'the wonder and envy of the world.' With better reason it may be said, that parliament is a mere out-work of the court, a phalanx of mercenaries embattled against the reason, the happiness, and the liberty of mankind. The game laws, the dog act, the shop tax, the window tax, the pedlar tax, the attorney tax, and a thousand others, give us a right to wish that their authors had been hanged." Again, in a note at the bottom of page seventy-third of the printed copies of the said wicked and seditious pamphlet: "What our most excellent constitution may be in theory, I neither know nor care. In practice it is altogether a conspiracy of the rich against the poor." Again, in page fifty-eight: "The German princes, and among others, the elector of Hanover expressed their highest disapprobation of the projected peace. The arguments of George, if such they may be called, are too frivolous for confutation, or insertion here. Portugal and Savoy seconded the German corps. The emoluments derived from war, were greater than their expectations from peace. The money of the maritime powers and chiefly that of England, more than the territories of the House of Bourbon, was the grand object of those petty tyrants, 'who fed on the blood of subjects whom they let out for slaughter.' Compared with merchants of this description, an ordinary offender is a paragon of innocence. When a nation sends for sovereigns from such a school, there appears but a melancholy presage of the prospect before it." Which wicked and seditious pamphlet containing the foresaid wicked and seditious passages, the said James Thomson Callender delivered to the said James Robertson and Walter Berry, or to one and both of them, or one or other of them upon one or other of the days of the said month of May, in the year one thousand seven hundred and ninety-two, or of April immediately preceding, or June immediately following, or upon some other day to the public prosecutor unknown, in order to be printed; and the said James Robertson and Walter Berry, did one and both or one or other of them, accordingly print the said wicked and seditious pamphlet, or cause the same to be printed at the printing office of the said James Robertson in the Horsewynd aforesaid, upon some of the days of the said months of May or June, in the year one thousand seven hundred and ninety-two, and having caused a thousand copies or thereby of the said wicked and seditious pamphlet to be thrown off, they were sent to the shop on the South bridge possessed by the said James Robertson and Walter Berry; and the said James Robertson and Walter Berry, did one and both, or one or other of them, during the months of July, August, September, October, November, and December, in the said year, one thousand seven hundred and ninety-two, sell or cause to be sold many copies of the said wicked and seditious pamphlet from their said shop in South Bridge-street of Edinburgh. And the said James Robertson having been apprehended and carried before John Pringle, esquire, advocate, our sheriff depute of the county of Edinburgh, he did upon the twenty-ninth day of December, seventeen hundred

and ninety-two, in his presence emit a declaration, which however he refused to sign; and the said Walter Berry being likewise examined in presence of the said John Pringle, esquire, did emit and sign a declaration upon the said twenty-ninth day of December, seventeen hundred and ninety-two; and the said James Thomson Callender having been examined in presence of the said John Pringle, esquire, on the first day of January, seventeen hundred and ninety-three, did also of that date emit and sign a declaration; which three declarations are all signed by the said John Pringle, esquire, and being to be used against the said James Thomson Callender, James Robertson, and Walter Berry, respectively upon their trial, will for that purpose together with a printed copy of the foresaid wicked and seditious pamphlet, being one of those sold by the said James Robertson and Walter Berry as aforesaid, which is subscribed by the said Walter Berry, and the said John Pringle, esquire, and other persons, be lodged in due time with the clerk of the high court of justiciary, before which they are to be tried, that they may have an opportunity of seeing the same: At least, times and places foresaid the said wicked and seditious pamphlet containing the foresaid wicked and seditious passages, was written, printed, published, circulated, and sold as aforesaid; And the said James Thomson Callender, James Robertson, and Walter Berry, above complained upon, are all and each, or one or other of them, guilty of the foresaid crimes, or one or other of them, actors or art and part. All which, or part thereof, being found proven, by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary, to be holden by them within the criminal court house of Edinburgh, upon the twenty-eighth day of January instant, the said James Thomson Callender, James Robertson, and Walter Berry, ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

And James Thomson Callender, messenger at arms, and writer in Edinburgh, likewise indicted in the said criminal letters, being oft times called in court, and three times at the door of the court-house, as use is, failed to appear.

Whereupon his majesty's advocate moved, that sentence of fugitation and outlawry, might be pronounced against him.

The lord justice clerk and lords commissioners of justiciary, decern and adjudge the said James Thomson Callender, to be an outlaw and fugitive from his majesty's laws: and ordain him to be put to his highness's horn, and all his moveable goods and gear, to be escheat and inbrought to his majesty's use, for his contempt and disobedience in not appearing this day and place in the hour of cause, to have underlyen the law, for the crimes specified in the said criminal letters, raised against him, thereanent, as he who was lawfully cited to that effect, and ofttimes called in court, and failing to appear as said is.

(Signed) ROBT. MAC QUEEN, I. P. D.

Thereafter his majesty's advocate represented, that he was determined to use every endeavour to apprehend the person of the said James Thomson Callender, and still to bring him to trial before their lordships, and a jury of his country, along with the panels, Berry and Robertson, and with that view, he was under the necessity of moving their lordships, for a continuation against the panels to some future day, between and which, he would use every effort to bring Callender to their lordships' bar.

The diet continued against Berry and Robertson till Monday the 11th day of February next, at ten o'clock.

[In the record of the proceedings of the Court on the 11th of February this case is not mentioned.

No farther proceedings took place with respect to Callender. Berry and Robertson were then proceeded against on another indictment.]

Curia Justiciaria S. D. N. Regis, tenta in Nova Sessionis domo de Edinburgh, decimo octavo die Februarii, millesimo septingentesimo et nonagesimo tertio, per honorabiles viros Robertum Macqueen de Braxfield, Dominum Justiciarum Clericum, Davidem Rae de Eskgrove, Joannem Swinton de Swinton, Dominum Gulielmum Nairne de Dunsinan, baronetum, et Alexandrum Abercromby de Abercromby, Dominos Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

Intran.

Walter Berry, bookseller, South Bridge-street, Edinburgh; and,

James Robertson, also bookseller there, and printer in the Horsewynd of Edinburgh—Panels.*

Indicted and accused—at the instance of Robert Dundas, esquire, of Arniston, his majesty's advocate, for his majesty's interest, for the crimes of printing, publishing, circulating and selling a seditious writing or pamphlet, in manner mentioned in the criminal libel raised against them thereanent; bearing, that albeit by the laws of this, and of all other well governed realms, the wickedly and feloniously printing, or causing to be printed, any seditious writing or pamphlet, containing false, wicked, and seditious assertions, calcu-

* A short account of this Case was published by Dr. Anderson in the Bee, No. 125, April 24th, 1793.

lated to degrade and bring into contempt our present happy system of government, and withdraw therefrom the confidence and affection of our subjects; as also the wickedly, and feloniously publishing, circulating, and selling such wicked and seditious writing or pamphlet, when so printed, or the causing the same to be published, circulated, and sold among the inhabitants of this country; are crimes of an heinous nature, dangerous to the public peace, and severely punishable: Yet true it is, and of verity, that the said Walter Berry and James Robertson above complained on, have presumed to commit, and are guilty of all and each, or one or other, of the aforesaid crimes, actors, or art and part: In so far as upon one or other of the days of the month of May, in the year 1792, or upon some other day in that year to the public prosecutor unknown, James Thomson Callender messenger at arms, and writer in Edinburgh, having at Edinburgh, in the county of Edinburgh, or at some other place to the public prosecutor unknown, wickedly and feloniously composed and written, or caused to be composed and written, a seditious writing or pamphlet, intituled, "The Political Progress of Britain, or an Impartial Account of the principal Abuses in the Government of this Country, from the Revolution in 1688. The whole tending to prove the ruinous Consequences of the Popular System of War and Conquest. The World's Mad Business. Part 1st." which writing or pamphlet is of a wicked tendency, and contains among other wicked and seditious passages, the following (pages 19th and 20th of the printed copies of said pamphlet): "There is a cant expression in this country, that our government is deservedly 'the wonder and 'envy of the world;' with better reason it may be said, that parliament is a mere outwork of the court, a phalanx of mercenaries, embattled against the reason, the happiness, and the liberties of mankind. The game laws, the dog act, the shop tax, the window tax, the pedlar tax, the attorney tax, and a thousand others, give us a right to wish that their authors had been hanged." Again, in a note at the bottom of page 23rd, of the printed copies of the said wicked and seditious pamphlet; "What our most excellent constitution may be in theory, I neither know nor care; in practice it is altogether a conspiracy of the rich against the poor." Again, in page 58th, "The German princes, and among others, the elector of Hanover, expressed their highest disapprobation of the projected peace. The arguments of George, if such they may be called, are too frivolous for confutation, or insertion here. Portugal and Savoy seconded the German chorus. The emoluments derived from war, were greater than their expectations from peace. The money of the maritime powers, and chiefly that of England, more than the territories of the house of Bourbon, was the grand object of these petty tyrants, 'who fed on the blood of subjects whom they let out for slaughter. Compared with merchants of this description, an ordinary offender is a paragon of innocence. When a nation sends for sovereigns from such a school, there appears but a melancholy presage of the prospect before it." And the said James Thomson Callender, having delivered the said wicked and seditious writing or pamphlet, containing the aforesaid false, wicked, and seditious passages, and others of a similar tendency, to the said James Robertson and Walter Berry, or to one and both of them, or to one or other of them, upon one or other of the days of the said month of May, in the year 1792, or of April immediately preceding, or of June immediately following, or upon some other day to the public prosecutor unknown, the said James Robertson and Walter Berry, did one and both, or one or other of them, wickedly and feloniously print the said wicked and seditious writing or pamphlet, or caused the same to be printed, at the printing-office of the said James Robertson in the Horse-wynd, aforesaid, on some of the days of the said months of May or June in the year 1792; and having caused a thousand copies, or thereby, of the said wicked and seditious pamphlet to be thrown off, they, or part thereof, were sent to the shop on the South Bridge, possessed by the said James Robertson and Walter Berry; and the said James Robertson and Walter Berry did, one and both, or one or other of them, during the months of July, August, September, October, November, and December, in the said year 1792, wickedly and feloniously sell and circulate, or cause to be sold or circulated, from their said shop, in South Bridge-street of Edinburgh, many copies of the said wicked and seditious pamphlet so printed and published by them. And the said James Thomson Callender having been indicted at the instance of the public prosecutor to stand trial before the high court of justiciary upon the 28th day of January last, for the crime of writing and composing the said seditious pamphlet, he, conscious of his guilt, and in order to evade the punishment of the law, did abscond, and has been fugitate by a sentence of that high court. And the said James Robertson having been apprehended and carried before John Pringle, esq., advocate, our sheriff depute of the county of Edinburgh, he did upon the 29th day of December, 1792, in his presence, emit a declaration, which however he refused to sign: and the said Walter Berry being likewise examined in presence of the said John Pringle, did emit, and sign a declaration upon the said 29th day of December, 1792; which two declarations are signed by the said John Pringle, esq, and, being to be used in evidence against the said James Robertson and Walter Berry, respectively upon their trial, will, for that purpose, together with a printed copy of the foresaid wicked and seditious pamphlet, being one of

those sold by the said James Robertson and Walter Berry as aforesaid, which is subscribed by the said Walter Berry, and the said John Pringle, esq., and other persons, be lodged in due time with the clerk of the high court of justiciary, before which they are to be tried, that they may have an opportunity of seeing the same: at least, times and places foresaid, the said wicked and seditious writing or pamphlet containing the foresaid wicked and seditious passages, and others of a similar tendency, was wickedly and feloniously printed, published, circulated, and sold, as aforesaid; and the said James Robertson and Walter Berry, above complained upon, are, both and each, or one or other of them, guilty of the foresaid crimes, or one or other of them, actors, or art and part. All which, or part thereof, being found proven, by the verdict of an assize, before the lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary to be holden by them, within the criminal court house of Edinburgh, upon the 18th day of February, instant, the said James Robertson and Walter Berry ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

The libel being read over to the panels in open court, and they being severally interrogated thereupon, they answered they were not guilty.

Pro'rs for the Prosecutor.—Robert Dundas, esq., of Arniston, his majesty's advocate.

Mr. *Robert Blair*, advocate, his majesty's solicitor general; and

Mr. *James Montgomery*, advocate.

Pro'rs for the Panels.—Mr. *Alex. Wight*, advocate; and

Mr. *Arch. Fletcher*, advocate.

Mr. *Fletcher* for the panels, represented, that he hoped their innocence would be vindicated upon a fair investigation of this matter. That in the outset he would observe, that they had been both in America during the war there, where they had manifested the highest loyalty, and suffered deeply by loss of property on that account. That the case now before the Court, involves in it no less than the liberty of the press, and, if the tendency of this prosecution shall strike at that privilege, it must be infinitely more injurious to the happy constitution of this country than fifty publications such as that now under discussion. If the liberty of the press is affected, a total darkness in political knowledge must ensue, the constitution must receive a mortal stab, and may, at last, perish. That it is submitted, in point of relevancy, that, in judging of the pamphlet libelled, the whole must be taken together to decide on the character of the book, not the three passages selected. That the panels surely cannot be worse than the author, and his meaning must be sought. The coarseness of the expressions are more striking than the sentiment, that the words used meant more to mend the constitution, than to bring it into contempt. That the author, it was plain, was not writing against the institution of parliament, but against the practice of it; and the influence of the Crown was a topic of discussion in the house of Commons itself. Every subject has a right to canvass and examine the acts of the legislature, and deliver their opinions; no crime can be inferred, unless with intent to degrade, and bring into contempt, the system of government. But this publication seems to be written from benevolence to mankind in general;—not to vilify, and calumniate, but with a wish to correct and reform, and the same words almost have been used in other authors published long ago, viz., Resolutions by the duke of Richmond published in 1780, and Dr. Burgh's Political Disquisitions, page 406. But, 2dly, whatever may be the criminality of the author, the same does not apply to the panels. They only received the copy, printed, and sold it in the way of their business. The simple act of printing and selling, is not criminal; besides, great part of it was printed before in a publication called the Bee, and not considered of any seditious tendency. The panels sold it with no such view, but merely for gain, and not by stealth, but openly and fairly, and the same was sold by almost every other bookseller in Edinburgh, and therefore he craved, that the libel might be found not relevant.

Mr. *Montgomery* answered, that the charge now brought against the panels was not printing certain passages pointed out in the libel, but the whole pamphlet, which, taken together, is a wicked and seditious libel. That the liberty of the press can only be supported, by suppressing publications such as that now libelled on; for, if such licentiousness is not curbed, the liberty of the press, and the liberty of the people, must fall together. That the passages recited were highly criminal, and indeed admitted by the counsel for the panels, and the intention must be presumed, from the first reading of them. That passages similar may have been wrote is no excuse. The temper of the times must merit consideration. The minds of the people may be inflamed to gross enormities by publications at one time, that would have no bad effect at another, and the record of the Court will show how ill-timed, this publication was. 2dly. The printer and publisher, in this case, was worse than the author, as in forgery, the circulating is worse than the forger; and, therefore, upon the whole, there could remain no doubt of the relevance. And the panels with the libel, ought to be remitted to the knowledge of an assize in common form.

The lord justice clerk and lords commissioners of justiciary, having considered the criminal libel raised and pursued at the instance of his majesty's advocate, for his ma-

jesty's interest, against Walter Berry, and James Robertson, panels, with the foregoing debate; they find the libel relevant to infer the pains of law; but allow the panels and each of them to prove all facts and circumstances, that may tend to exculpate them, or alleviate their guilt, and remit the panels with the libel as found relevant to the knowledge of an assize.

(Signed) ROBT. M'QUEEN.

The following persons were then named to pass upon the assize of the panels.

John Balfour jun., merchant in Edinburgh.
Alexander Wright, wine merchant there.
Archibald Campbell, brewer there.
Thomas Hotchkis, brewer there.
James Clark, farrier there.
Walter Smeaton, painter there.
James Milne, tanner there.
John Wilson, coachmaker there.
Alexander Ponton, architect there.
Peter Cunningham, goldsmith there.
Archibald Borthwick, banker there.
William Ainslie, sadler there.
James Hamilton, upholsterer there.
Alexander Laing, builder there.
Alexander Reid builder there.

Who being all lawfully sworn, and no objection to the contrary,

The procurators for the prosecutor, for proof of the libel, proceeded to adduce the following witnesses, who being all lawfully sworn, purged of malice and partial counsel, emitted their depositions *viva voce*, in presence of the Court and Jury, without being reduced into writing, in terms of the statute.

1st, *John Brown*, journeyman printer in the printing-office of James Robertson, printer Horsewynd, Edinburgh.

[Lord *Henderland* came into Court.]

2nd, *Thomas Oliver*, apprentice, as a compositer, to the said James Robertson.

3rd, *James Bertie*, apprentice, as a compositor, to the said James Robertson.

4th, *William Curror*, writer in Edinburgh.

5th, *William Middleton*, sheriff-officer in Edinburgh.

6th, *Robert Hamilton*, running-stationer in Edinburgh.

7th, *James Rae*, servant to the countess of Hyndford.

8th, *William Wood*, bookseller in Edinburgh.

Thereafter the prosecutor being about to adduce witnesses for proving the declarations libelled on—The panels judicially admit, that the declarations libelled on were emitted by them respectively, voluntarily, and freely, of the date they bear, and that they were sober and in their sound senses.

After the foregoing admission was wrote out, the panels declined signing the same, and the following witnesses were adduced for proving the declarations.

9th, *William Scott*, procurator fiscal of the county of Edinburgh.

10th, *Joseph Mack*, writer in Edinburgh.

The declarations libelled on, having been proved by the depositions of the two last witnesses were read over in open court.

And thereupon the pro'rs for the prosecutor declared, that they closed their evidence. And the following witnesses were adduced in exculpation.

1st, *John Lamb*, apprentice to the said James Robertson.

2nd, Captain *Alexander Cameron*, of his majesty's 37th regiment of foot, presently quartered in Edinburgh Castle.

3rd, Mr. *William Creech*, bookseller in Edinburgh.

4th, *Elphingston Balfour*, merchant there.

5th, The Rev. Mr. *James Fraser*, minister of the gospel residing in Edinburgh.

6th, *John Bell*, bookseller in Edinburgh.

7th, *Alexander Thomson*, tea-dealer in Drummond-street, near Edinburgh.

8th, *John Millar*, optician and mathematical instrument maker in Edinburgh.

9th, *Thomas Reid*, watchmaker in Edinburgh.

10th, *James Dickson*, bookseller in Edinburgh.

The procurators for the panels thereupon declared, that they closed their evidence in exculpation.

The evidence was then summed up on the part of the prosecutor by his majesty's advocate, on the part of the panels by Mr. Alexander Wight, advocate, and lastly by the lord justice clerk.

The assize were then ordained to enclose and return their verdict next day at two o'clock.

Curia, &c. 19th February, 1793.

Intran.

Walter Berry and *James Robertson*, before designed—Panels.

Indicted and accused as in the preceding sederunt.

The persons who passed upon the assize of the panels, returned the following verdict:

At Edinburgh, the 18th day of Feb., 1793.

The assize having inclosed, made choice of the said James Hamilton to be their chancellor, and of the said Alexander Ponton to be their clerk; and having considered the criminal libel raised and pursued at the instance of his majesty's advocate for his majesty's interest against Walter Berry and James Robertson, panels, the interlocutor of relevancy pronounced thereon by the Court, the evidence adduced in proof of the libel, and evidence adduced in exculpation; they all in one voice find it proven, that the said James Robertson did print and publish, and that the said Walter Berry did publish only, the pamphlet libelled on. In witness whereof the said chancellor and clerk have sub-

scribed these presents, in their names and by their appointment, place, and date foresaid.

(Signed) JAMES HAMILTON, chancellor.
ALEX. PONTON, clerk.

Parties procurators having been heard upon the import of the foregoing verdict, the lords commissioners of justiciary supersede advising the foregoing verdict, and debate thereon till Friday next, the 22d instant, at two o'clock afternoon.

In obedience to the order of Court in the trial of James Robertson and Walter Berry, the following minutes were made up and given in:

Wight for the panels represented, that upon comparing together the criminal letters, the interlocutor upon the relevancy and the verdict returned by the jury, it would be evident to the Court, that no punishment could be inflicted upon the panels, but that they were well entitled to expect a judgment dismissing them *simpliciter* from the bar. The criminal letters set forth in the major proposition, that, "the *wickedly and feloniously* printing, or causing to be printed, any *seditious* writing or pamphlet, containing *false wicked, and seditious assertions, calculated to degrade and bring into contempt our present happy system of government, and withdraw therefrom the confidence and affection of our subjects*, as also the *wickedly and feloniously* publishing, circulating, and selling any such *wicked and seditious* writing or pamphlet, when so printed, or the causing the same to be published, circulated, and sold among the inhabitants of this country, were crimes of an heinous nature, dangerous to the public peace, and severely punishable." And in the view of showing that the panels were guilty "of all and each, or one or other of the aforesaid crimes, actors or art and part," the criminal letters proceeded to state, that James Thomson Callender, messenger at arms, and writer in Edinburgh, had wickedly and feloniously composed and written, or caused to be composed and written, a seditious writing or pamphlet, intituled 'The Political Progress of Britain,' &c. containing certain passages particularly inserted; and then went on as follows: "and the said James Thomson Callender having delivered the said wicked and seditious writing or pamphlet containing the aforesaid false, wicked, and seditious passages, and others of a similar tendency, to the said James Robertson and Walter Berry, or to one and both of them, or one or other of them, upon one or other of the days of the said month of May in the year 1792, or of April immediately preceding, or of June immediately following, or upon some other day, to the public prosecutor unknown the said James Robertson and Walter Berry did, one and both, or one or other of them, *wickedly and feloniously* print the said *wicked and seditious* writing or pamphlet, or caused the same to be printed, at the printing-office of the said James Robertson in the Horsewynd aforesaid, &c. And the said James Robertson and Walter Berry did, one and both, or one or other of them, during the months of July, August, September, October, November, and December in the said year 1792, *wickedly and feloniously* sell, and circulate, or cause to be sold and circulated from their said shop in South Bridge-street of Edinburgh, many copies of the said *wicked and seditious* pamphlet, so printed and published by them, &c. At least times and places foresaid, the said *wicked and seditious* writing or pamphlet containing the foresaid wicked and seditious passages, and others of a similar tendency, was *wickedly and feloniously* printed, published, circulated and sold as aforesaid: and the said James Robertson and Walter Berry above complained upon are both and each, or one or other of them guilty of the foresaid crimes, or one or other of them actors or actor, or art and part thereof. All which or part thereof being found proven by the verdict of an assize before the lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary to be holden by them within the criminal court-house of Edinburgh, upon the 18th day of February instant, the said James Robertson and Walter Berry ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming." Such was the charge exhibited against the panels; and upon considering that charge, the Court by their interlocutor of relevancy "found the libel relevant to infer the pains of law; but allowed the panels and each of them to prove all facts and circumstances that may tend to exculpate them or alleviate their guilt, and remitted the panels, with the libel as found relevant to the knowledge of an assize." The question, therefore, that came now to be determined by the Court was, whether the jury have or have not found it proved, that the panels were guilty of the crime imputed to them, in the criminal letters thus found relevant by the Court. And in order to show that they had found no such thing, it was only necessary to look at the verdict, which, after mentioning their having considered the libel, the interlocutor of relevancy, and the proof, proceeds shortly as follows: "They all in one voice find it proven that the said James Robertson did print and publish; and that the said Walter Berry did publish only the pamphlet libelled on." To trouble the Court with a long comment upon the import of this verdict, would be equally indecent as it must be unnecessary. For although hours were to be spent in doing so, the result could only be, that it went no further than to find that one of the panels did print and publish, and that the other did publish only the pamphlet libelled. This, however, could not possibly amount to a finding that the crimes imputed to the panels in the libel, and found

relevant by the interlocutor of the Court, to infer the pains of law, were in any degree proved against them. For in the first place, the verdict was totally deficient in this respect, that it did not establish any *corpus delicti*; for, although it found that the pamphlet libelled on was printed and published by one of the panels, and published by the other, it did not find that the said pamphlet was, as alleged in the libel, a *seditious* pamphlet. Had this pamphlet been described only as a seditious pamphlet, or as containing certain wicked and seditious passages inserted in the libel, there might perhaps have been some colour (although a narrow one) for pretending that the verdict implied that the pamphlet was seditious. But the Court would observe, that the pamphlet was described in the criminal letters by its title; and although the libel afterwards alleged, that it was of a wicked tendency, and contained, among other wicked and seditious passages, the following, &c.; yet, there was no ground to conclude from the verdict, that the jury, by referring to the pamphlet libelled, did find the innuendos against that pamphlet, or that it was of a wicked tendency, and contained seditious passages, proved. Even supposing it probable that, by referring to the pamphlet libelled, they meant to refer to the pamphlet as libelled; or, in other words, to the *seditious* pamphlet libelled, it would be sufficient for the panels to observe, that they had omitted to do so, and that the omission could not now be supplied. In the next place, the Court would observe, that the crime imputed to the panels in the libel, was not simply their having printed or published the alleged wicked and seditious pamphlet therein mentioned, but their having done so *wickedly and feloniously*. The public prosecutor was sensible that a pamphlet, however wicked and seditious, might be printed and published by a printer or bookseller, without such printer or bookseller's having the smallest intention to excite sedition, or without his even knowing that the pamphlet had such a tendency. It did not, therefore, occur to his lordship to bring the panels to trial before this Court for the mere act of printing or publishing what he considered to be a seditious pamphlet; but, on the contrary, he brought them to trial upon a charge of their having *wickedly and feloniously* published said pamphlet; thereby clearly connecting the printing and publishing with a criminal or seditious intention, and making such intention the very essence of the criminal charge. But upon looking into the verdict, the Court would perceive, that the jury had not found it proved that either of the panels were guilty in that respect; or that in printing and publishing the pamphlet, they either acted wickedly and feloniously, or with any criminal intention, or were actuated by any other motive, but what must be admitted to be lawful, viz. the prosecuting their respective employments for the support of themselves and their families. In short the jury only found it proved, that they did what the public prosecutor had not imputed to them as a criminal act. Nor would it avail the prosecutor to found upon that part of the libel which charges art and part; for even there they were charged only with being art or part in feloniously and wickedly printing and publishing. The panels should think themselves much to blame if they were to resort to arguments, in order to show that the verdict of a jury must be taken, as the jury have given it; and that it must be in vain either for a public prosecutor to allege that it means more, or to a panel to contend that it means less, than what the words in which it is expressed do, in the common acceptation of language, convey. The panels might with safety admit, that if in this case the jury had found it proved, 'that the said James Robertson did 'print and publish, and that the said Walter 'Berry did publish only, the pamphlet libelled 'on, in the manner' or 'in the terms libelled,' there would have been some colour for maintaining, that they had found it proved, that the panels had done so wickedly and feloniously, and that the verdict was tantamount to one finding them guilty of the crime libelled; but as the jury, in fact, only found that they printed and published 'the pamphlet 'libelled on,' without adding a single word to such finding, it was perfectly clear, that they had neither found the panels guilty of the crime libelled, nor of any other crime. For how plausible soever it might be, to tell a jury, that the printing and publishing a seditious pamphlet, did of itself necessarily imply, in the printers and publishers a seditious, or wicked and felonious intention, without the necessity of proving such intention *aliunde*; yet it was necessary that a jury should speak in plain, direct, and positive terms: and as, in this case, they had confined their verdict entirely to the printing and publishing, it was impossible to make such finding imply that such printing and publishing proceeded from a criminal intention. If the jury had in this case, after finding it proved, 'that the said James Robertson did print and 'publish, and that the said Walter Berry did 'publish only,' the pamphlet libelled on, added, 'but find it not proved that they did 'so with a seditious, wicked, or felonious in-'tention,' it would certainly have behoved the Court to assoilzie the panels, and to dismiss them immediately from the bar. But although the verdict actually pronounced by the jury was not so particular as the one here supposed, it was in effect and substance the same, and must be attended with the same legal consequences: for as it did not find the panels guilty of the crime charged against them, but only of an act, which, from aught that could appear from the verdict, even when compared with the libel and the interlocutor of relevancy, might have been perfectly in-

present, it was impossible that any punishment could be inflicted upon them. Were there any doubt in this case, it might be removed by putting cases of a similar nature; and although the panels were unwilling to consume the time of the Court by a variety of illustrations of that sort, they would take the liberty shortly to put the case, that a person had been charged in a criminal libel with having received stolen goods, *knowing them to be stolen*, and that the jury had returned a verdict, finding it proven, that the panel had received *the goods libelled*. It evidently could not be maintained, that, in consequence of such a verdict, he could be punished as guilty of the crime imputed to him in the libel. Nay, even although the jury had found it proved that he had received the *stolen goods libelled*, it would have been equally incompetent to punish him as a reset of theft, seeing that they had not likewise found, that he knew the goods to be stolen, as in that circumstance consisted the essence of the crime. But if this be so, it must of course be admitted, that no punishment can be inflicted upon the panels, in consequence of the verdict returned against them, in respect that although, by that verdict, the jury found it proved, that they had printed and published the pamphlet libelled on, they neither found it proved, that such pamphlet was a seditious pamphlet, nor that the panels printed and published it wickedly and feloniously, with a seditious or wicked intention. Without, therefore, troubling their lordships further upon a point that appeared to be so exceedingly clear, the panels would now conclude in the firm confidence of its being the decided opinion of the Court, that no further procedure could be had against them, and that they ought to be assoilzied from the criminal prosecution, and immediately dismissed from the bar.

Advocatus answered, that with whatever show of confidence the panels affected to talk of the objection which they had now stated to the legal import and effect of the unanimous verdict returned against them, he trusted in being able, by a very few observations, to satisfy the Court, that the verdict was amply sufficient for carrying the clear intention of the jury into effect, and obliging their lordships to pronounce the judgment of the law thereon against these panels. That in one observation he perfectly agreed with the counsel for the panels, that it was not the mere printing or publishing a seditious pamphlet which was the offence imputed to the panels in the criminal letters under which they had been tried, but the printing and publishing it with a wicked and felonious intention; and it was impossible to read the criminal letters without observing at one glance, that this was the only offence imputed to them, and to the truth or falsehood of which imputation the verdict could alone apply. That it was almost unnecessary to remind their lordships, that, by the criminal law of this country, juries were at liberty to adopt what form or style of expression they pleased in their verdicts, and were tied down to no precise form of words in the expression of their opinion upon the matter which they were sworn to try: that they might either return a general verdict of guilty, or not guilty, proven, or not proven; or a special verdict, as was done in the present case, finding certain facts and circumstances of the charge proven, and thereby devolving on the Court the duty of expounding the verdict, and applying the law to the facts which they had found proven. That it was only necessary for the verdict to express, in terms sufficiently certain and unambiguous, what was their opinion, and what was their meaning, to the exclusion of all other meanings whatever; particularly so, that the verdict should not admit of being construed into an opinion of the jury that the panels were innocent; in which case, he admitted, that no doubt could remain of their lordships adopting the milder construction, by holding it as a verdict of acquittal; or, if it was absolutely inextricable and unintelligible, refusing to give any effect to it whatever, and, as a necessary consequence, dismissing the panels from the bar. The question, therefore, was, whether or not the jury had found, with sufficient certainty of expression, the truth of the offence imputed to the panels. And a little attention would satisfy the Court, that they had not only found the guilt of the panels with sufficient certainty, but that it was impossible to twist the verdict into any other meaning, or to construe it into a verdict of acquittal. The words of the verdict were: 'They all in one voice find it proven, that the 'said James Robertson did print and publish, 'and that the said Walter Berry did publish 'only, the pamphlet libelled on.' This finding of the verdict proceeded in the common and usual form, upon a narrative of, and reference to, the criminal letters themselves. And to discover what the opinion of the jury was with regard to the pamphlet, was to look back to the libel itself, to which they had referred in their verdict, where it was described distinctly and precisely as a wicked and seditious pamphlet, and to the interlocutor on the relevancy of that libel, which the jury had also referred to, by which the Court had found it to be seditious, and sent as such to the jury for their consideration: That it was in vain, therefore, for the panels to contend, that the *corpus delicti* was not here found, or that the jury had not, in plain and clear terms, found, that the pamphlet was seditious; because, although the preamble or title page of the pamphlet itself is quoted in the libel, yet the prosecutor did not simply describe it as a pamphlet bearing that title prefixed, but as a *seditious* writing or pamphlet intituled 'The Political Progress, &c.; which writing or pamphlet is of a *wicked tendency*.' That

such being the pamphlet libelled on, the jury would have been involving their verdict in obscurity if they had used a single word more than they have done to express their opinion of the pamphlet being seditious; and upon this point of the argument, he was in the judgment of the Court, that the objection was perfectly frivolous. But what seemed to be chiefly trusted in by the panels, was the other objection to the verdict, viz. that though the jury had found the printing and publishing proven, yet they had not found this to have been done by the panels, with a wicked and seditious intention, as charged in the criminal letters; and as the mere printing and publishing a seditious pamphlet was not imputed to the panels as a crime, and might be done with perfect innocence, the jury had not found it proven, what the prosecutor had alleged against them. That though, at first sight, the objection bore a plausible appearance, it would appear to the Court, on a little attention, perfectly fallacious; for it was clear, that the jury did not mean to acquit the prisoners, as in that event, they would unquestionably have returned a verdict either of not guilty, or not proven. In place of this, they had found the printing and publishing proved against the one, but the publishing only against the other. By doing this, the jury had in fact found the panels guilty, for two reasons: 1st, Because the finding it proven, that the panels had printed and published a seditious pamphlet, implied that the jury thought this was done with a felonious intention; as otherwise they would have found that it was not done with a felonious intention; or, in other words, would have returned a verdict not guilty, or not proven: and 2dly, Because printing and publishing must be taken in the sense in which these words were used in the criminal letters; viz. a wicked and felonious printing and publishing, and which was the legal and only acceptation of these words, when used in the verdict: that it would have been a very different case, if the criminal letters had contained alternate conclusions; or if the words 'printing and publishing' had been used by the prosecutor in a two-fold sense; 1st, as a felonious printing and publishing a seditious pamphlet; and 2dly, merely printing and publishing such pamphlet, without saying whether a felonious intention accompanied the printing and publishing, or not. In such case, the objection of the panels would have been very forcible indeed; as it would have been impossible in such case to have maintained, that the jury had used the words in the first sense, to the exclusion of the second; and their finding would rather have applied to the second sense, in which the terms 'printing and publishing' were used in the libel: but that it was impossible to maintain any such doctrine at present, where the terms printing and publishing were used in the libel only in one sense, viz. a wicked and felonious printing and publishing, of which the panels were therein accused, and upon which the jury had returned a verdict, finding that the panels had *printed and published*, *i. e.* printed and published as charged in the libel, and in no other sense whatever: that if the jury had meant merely to find the fact of printing and publishing, in contradistinction to the printing and publishing charged against the panels, it was their duty, and they most unquestionably would have said so; as was done in the case of Mr. Stein for bribery, where the jury found the fact of giving the money proven, but found it, at the same time, not proven that the same was done with a criminal intention. The verdict in that case, was, "The jury unanimously find the delivery of 500*l.* sterling, to Mr. Bonar proven; but do not find the intention of seducing and corrupting the said John Bonar proven." The prosecutor can hardly doubt that, if the last part of the finding, in that case, had been omitted, and the jury had simply found, upon trial of the indictment against Stein, "the delivery of 500*l.* sterling, to Mr. Bonar proven," your lordships would upon the import of that special verdict, have pronounced an adequate judgment against Mr. Stein; because, by finding the delivery of the money to Mr. Bonar proven, the jury found the truth of the facts stated in the indictment, viz. a criminal, not an innocent delivery, and for which Mr. Stein was responsible; but the jury in that case, being of opinion, that though the mere delivery was proved, yet the criminal nature of that delivery was not, found so in express terms; and had the jury in the present case, been of opinion that the mere act of printing and publishing a pamphlet, whether seditious or not, was all that was proved against the present panels, but that the wicked and felonious printing and publishing charged against them was not proved, they would in like manner have followed up their verdict, upon the bare fact of printing and publishing with a declaration to that effect, similar to what was done by the jury who tried Mr. Stein. In the case of a charge of murder, for instance, if a jury had found that A fired a pistol at B, by which B was wounded, and of which wound he instantly died, and, as they are bound to no precise form or style of words, had been pleased to return their verdict to your lordships in that shape, in place of the more simple and obvious verdict of guilty, your lordships, as in the case of all special verdicts, being obliged to decide upon their import and to deduce the legal inference from the facts found by the jury, would in the prosecutor's apprehension have been obliged to pronounce a capital sentence. But, if the jury in such case had, as in Stein's case, followed up such finding with a declaration, that the intention to murder did not appear to them proved, sentence of

death could not have followed, but an arbitrary punishment, adequate, as your lordships might think fit, and suitable to the circumstances of the case before you: that the prosecutor farther admitted, that, as it was the duty, and in the power of a jury, expressly to find, that the wicked or felonious intention charged, was or was not proved, so it was equally competent for them to do this by implication; and that cases might occur, where the verdict could only admit of being construed into an acquittal from the offence charged, and into a finding that the intention was not proved; but that this was not the case now in hand, where the verdict could only admit of being construed into an unanimous opinion of the guilt of the panels, as charged. Had the jury, for instance, in the present case, found in the following terms, "That James Robertson printed and published *only*, and Walter Berry published *only* the pamphlet libelled,"—The prosecutor admits, that in his opinion, this would have been tantamount to finding, that the panels had only printed and published, but not in the sense charged in the criminal letters, viz. that they had done so wickedly and feloniously, and would have been, *ex figura verborum*, as unambiguous and effectual an opinion of the panels innocence, as if the jury had returned a verdict of not guilty, or not proven, in general terms, or had found as in the case of Stein, *specially*, that though the fact of printing was proved, the wicked and felonious intention of doing so was not. But in the present case the jury had not used the adverb *only* in that sense; nor was it possible to give to it any other effect than this, that Robertson was guilty of both printing and publishing as charged in the indictment, but that Berry was guilty *only* of publishing, as charged in the indictment. The adverb "only" was not a technical term, admitting of but one sense, but was like every other word used in common speech, pliable and generic, which, placed in one part of a sentence might convey one meaning, and placed in another, would imply just the reverse, in the mouth of the speaker or writer. If it had been used twice in the verdict by the jury, as above supposed, it would, as already observed, have been tantamount to an acquittal; but used only once, with relation to Mr. Berry, and for the purpose of distinguishing his case from that of Mr. Robertson, it has just the opposite effect, and affords positive and incontrovertible proof of the very reverse, viz. That this is a verdict of conviction, and that verdict as clearly and sufficiently expressed, to the exclusion of every supposition of an intention to find the panels innocent, as if the jury, in place of finding, which they have a right to do, a special verdict, had adopted the more simple mode of a general verdict of proven or guilty. That the prosecutor, in support of what he was now stating, could not avoid referring their lordships to the case quoted for the panels in the course of the pleading, Rex *versus* Woodfall,* which, so far from being for their argument, did, in his apprehension, completely support the view which he had at present given of the legal import and effect of the present verdict. Mr. Woodfall was tried upon an information brought against him by the attorney-general, for printing and publishing in the Public Advertiser a seditious libel signed Junius. Upon the trial the jury found him guilty of the printing and publishing *only*. The counsel for the Crown insisted that this was a verdict of guilty; the counsel for the defendant on the other hand, insisted that the addition of the term *only* made it amount to a verdict of acquittal; at least, that it was an imperfect verdict, and that a new trial ought to be granted. The cause was fully heard before lord Mansfield, on Friday the 22d of June, and Tuesday, the 3d of July 1770; and after full deliberation, his lordship, on the 20th of November thereafter, delivered the opinion of the Court as follows: "The prosecution is an information against the defendant, for printing and publishing a libel in the Public Advertiser, signed Junius; the tenor of which is set out with proper averments, as to the meaning of the libel, the subject matter, and the persons concerning which and of whom it speaks, with innuendoes filling up all the blanks, and the usual epithets."† His lordship then proceeds to state the import of the evidence, which was clear, and the verdict of the jury, which was "guilty of the printing and publishing *only*;"—and after stating some special circumstances not connected with the main question, and that it was the opinion of the Court, that the word *only* must stand part of the verdict; and that it was impossible, as the attorney-general had argued, to omit that word, his lordship stated it, "Being therefore a question of law upon the face of the verdict, the defendants motion must be considered upon the ground of the word *only* standing; *was it omitted there could be no doubt.* Guilty of printing and publishing, where there is no other charge, is 'guilty'; for nothing more is to be found by the jury.

"In the case of the King and Williams, the jury found the defendant 'guilty of printing 'and publishing the North Briton, No. 45;' the clerk entered it up 'guilty', and no objection was ever made.

"Where there are more charges than one, *guilty of some only*, is an acquittal as to the rest.

"*But in this information there is no charge except for printing and publishing.*

"Clearly there can be no judgment of acquittal; *because the fact found by the jury is the very crime they were to try.*

"The only question is 'whether by any pos-'sibility, the word *only*, can have a mean-

* See it *antè*, Vol. 20, p. 895.
† *Antè*, Vol. 20, p. 917.

'ing which would affect or contradict the ver-
'dict.'

"That the law, as to the subject matter of the verdict, is, as I have stated, has been so often unanimously agreed by the whole court upon every report I have made of a trial for a libel, that it would be improper to make it a question now in this place.

"Among those that concurred, the bar will recollect the dead, and the living not now here.

"And we all again declare our opinion, that the direction is right and according to law.

"This direction, though often given with an express request from me, that if there was the least doubt they would move the Court, has never been complained of in court. And yet if had been wrong, a new trial would be of course. It is not now complained of.

"Taking then the law to be according to this direction the question is, 'Whether any 'meaning can be put upon the word *only*, as it 'stands upon the record, which will affect the 'verdict.'

"If they meant to say, they did not find it a libel, or did not find the epithets, or did not find any express malicious intent, it would not affect the verdict; because none of these things were to be proved or found either way.

"If, by "only" they meant to say, 'that 'they did not find the meaning put upon the 'paper by the information,' they should have acquitted him.

"If they had expressed this to be their meaning, the verdict would have been inconsistent and repugnant; for they ought not to find the defendant guilty, unless they find the meaning put upon the paper by the information and judgment of acquittal; ought to have been entered up.

"If they had expressed their meaning, in any of the other ways, the verdict would not have been affected, and judgment ought to be entered upon it.

"It is impossible to say, with certainty, what the jury really did mean; probably they had different meanings.

"If they could possibly mean that which, if expressed, would acquit the defendant, he ought not to be concluded by this verdict.

"It is possible some of them might mean not to find the whole sense and explanation put upon the paper by the innuendos in the information.

"If a doubt arises from an ambiguous and unusual word in the verdict, the Court ought to lean in favour of *venire de novo*.

"We are under the less difficulty; because, in favour of a defendant, though the verdict be full, the Court may grant a new trial.

"And we are all of opinion upon the whole of the case, that there should be a *venire de novo*."* That it was almost unnecessary to comment upon the distinct and perspicuous opinion here given, or to demonstrate how directly the principles of it apply to and govern the case in hand. All the doubt, in that case, turned upon the import of the word *only*. Had that been left out, lord Mansfield was clear that the verdict was equivalent to a general verdict of guilty; and that there would not have been a doubt upon the subject. In the present case, the word *only* is out of the question altogether, as to the import of the verdict; because it clearly neither affects nor contradicts the finding of the jury, farther than it discriminates the situation of Berry, in respect of printing, from the situation of Roberston in that respect. Had the verdict stood thus, "Find James Robertson *guilty* of printing and publishing, and Walter Berry *guilty* of publishing *only*, the pamphlet libelled," it is believed, that the panels would not have ventured to dispute the import; or if they had done so, that your lordships, without even feeling it necessary to have followed earl Mansfield's opinion, would have instantly repelled the objection. Does it then alter the case, that in place of the word *guilty*, the jury have adopted the usual and most common Scotch law phrase, *proven*? Unquestionably not. The word *guilty* by itself, or the word *proven* in itself, would, without any addition whatever, have been amply sufficient for conviction. The question might have been asked by the panels, of what have the jury found us *guilty*; or what is it our jury has found *proven* against us? The answer would have been the same then as is given now, and as was given by my lord Mansfield in the case of Woodfall; you must look to the indictment for that, where "there is no charge, except for printing and publishing, and because the fact found by the jury is the very fact which they were to try;" in the present case, you are alone accused of having wickedly and feloniously printed and published, and the jury have, in general and sufficient terms found you guilty, or found the fact proven. But the jury have gone farther; for they have found that the panels did print and publish the pamphlet libelled. The question is, in what sense and meaning did they use these words?—And the answer is obvious, the sense and meaning in which these words are alone used in the indictment, viz. a wicked and felonious printing and publishing. That was the fact, and the only fact alleged against these panels; and the jury have found the truth of that fact proven, after a full and deliberate trial of its truth or falsehood. It was in their power to find, either generally, or specially, as they pleased; and they have chosen to do the last. They have found the printing and publishing proven against one, and the publishing only against the other. The charge against them is one and entire, viz. a wicked and felonious printing and publishing. It is, in lord Mansfield's words, therefore "The very crime which the jury were to try;" and the very crime therefore which they

* *Antè*, Vol. 20, p. 919—921.

have alone found proven. That with these observations, he left the question as to the legal import of this verdict — and to the prosecutor it appeared one of extreme importance to the criminal law of Scotland to the consideration of the Court. It was more peculiarly important in the present case, that the verdict of the jury should have full effect, as the criminal law of Scotland did not admit of a new trial, as was the case in England; and where, even in the case of Woodfall, the Court unanimously refused to hold the verdict as an acquittal, but directed the information to be again tried. Nay, the counsel for the defendant did not even venture to rest on the argument, that it amounted to a verdict of acquittal, but chiefly trusted to what the court afterwards found, that it was so defective as to render a new trial necessary. Had this case been precisely similar, the prosecutor might have admitted that there was no remedy, and that no judgment could pass upon the verdict; but where no such doubt occurs, where it is evident that this verdict if laid before the court of King's-bench, upon the self-same day with Woodfall's, must have infallibly, and without doubt, been construed into a verdict of guilty, the prosecutor concludes, by expressing his hope that your lordships will be of opinion that the objection, however plausible at first sight, is not solid; and that full effect ought to be given to the import and meaning of the unanimous verdict returned against these panels by a jury of their country.

[After recording the foregoing minutes, the counsel for the panels applied to the Court, and were allowed to print and give in a reply on or before Monday the 22d instant.]

REPLY in the minutes of debate upon the import of the verdict in the trial of Robertson and Berry.

Decanus [The Hon. Henry Erskine] for the panels replied, that the learned and ingenious argument stated on the part of the public prosecutor, on the import of the verdict, and likewise the decision of the court of King's bench, in the case of Rex *versus* Woodfall, appeared rather to support than confute the objection taken to the verdict on the part of the panels. This will appear clearly, 1st, From considering how the law of Scotland stands with regard to criminal indictments, interlocutors on the relevancy, and verdicts general or special; and 2ndly, By attending to the law of England on this subject, as it was understood at the time of the decision in the case of Woodfall, and as it stands now explained by the very important act passed in the last session of parliament, for removing doubts respecting the functions of jurics in cases of libel, from which it will appear, that the observations made in that case by the learned judge, on which the prosecutor founds an argument to show that the present question would be decided in England contrary to what is now maintained by the panels, are clearly in favour of the panels plea; and that if the precise question now before your lordships were to occur in England, the objection must be sustained, even according to the opinion of the learned judge, in the case of Woodfall, applied to the real state of the law of England with regard to trials by jury in cases of libel, as explained and declared by the above-mentioned act.* By the law and practice of Scotland, every indictment is and must be conceived in a syllogistic form. The major proposition sets forth a crime by its legal technical name, and in an alternative describes its nature and essence; as, for instance, murder, or the wilfully and maliciously depriving a man of his life; theft, or the fraudulent abstraction of goods belonging to another; receipt, or the receiving stolen goods, knowing them to be stolen, and the like. The minor proposition then states precisely the particular facts alleged to be done by the panel, as amounting to the crime libelled; and as *intentio facit crimen*, it is essentially necessary that it be charged in the minor proposition, that the facts were done with such a design and intention as constitute the crime generally announced in the major proposition, or therein specially described. Thus an indictment for murder in the minor proposition must indispensably charge, that the panel wickedly, maliciously, and feloniously killed the defunct, because otherwise the crime specified in the major proposition would not be charged in the minor, as, for ought there set furth, the panel might have killed the defunct by accident or in self-defence. In like manner in theft, the goods must be charged to have been fraudulently taken; for otherwise, though charged to be the goods of another, and to have been taken by the panel, they may have been taken by him from having mistaken them for his own property, or under the authority of a legal warrant, or in a variety of other ways, either innocent, or not amounting to theft. Thus also in receipt, it must not only be charged in the minor proposition, that the panel received goods which were stolen, but that he knew them to have been stolen; for otherwise the charge would not exclude his having received them innocently, as by donation or purchase, not knowing how the giver or seller acquired them. As to the conclusion, it subsumes, 'that all or part whereof,' (that is of the facts charged), 'being found proven by a verdict 'of an assize, the panel ought to be punished 'with the pains of law,' &c., the meaning of which is, for example, in murder, that if as much of the facts libelled shall be found proven as to satisfy the minds of a jury, not merely that the panel did kill the person

* See the stat. 32, Geo. 3, c. 60, inserted in the case of Stockdale, *ante*, Vol. 22, p. 306.

charged to have been deprived of life, but that he did wickedly, maliciously, or feloniously kill him, being the description of the crime in the major proposition, and the specific charge of fact in the minor, he ought to be punished with the pains of law. So much with regard to the form of the indictment. With regard to the relevancy of it, on which it is the province of your lordships to decide, it is impossible to dispute, that to render a libel relevant, that is, to make the major and minor proposition infer the conclusion, the facts charged in the minor proposition must amount clearly to the crime generally charged, and particularly defined in the major proposition. Thus, were a libel to charge in the major proposition that murder, or the wilfully, maliciously, and feloniously killing, or depriving a man of his life, is a crime of a heinous nature, and severely punishable, and in the minor, that the panel had been guilty of the said crime, in as much as that he did, upon a particular day, with a certain mortal weapon, wound A. B., of which wound he died, your lordships could not sustain this libel as relevant to infer the pains of law; because the fact might be proved, and yet the panel not only be innocent of murder, but guiltless of any crime whatever: He might be unfortunate enough to have killed his neighbour by accident; he might have been justifiable in killing him in self-defence; or he might have been commendable for killing him in battle in defence of his country. The same observation applies to the other cases above supposed, and to every one that can be figured. Such then being the duty of the public prosecutor, in framing a criminal libel, and of your lordships in judging of the relevancy of it; and seeing that if not found relevant, it cannot go to the knowledge of an assize,—let it next be considered what is the province of the jury. When the panel, on such a libel, is remitted to their knowledge, they may either pronounce a general verdict of guilty or not guilty; in doing which, they are virtually judges of the law as well as of the fact; for though they may pronounce a verdict of not guilty, merely because they are of opinion, that although the facts charged in the minor proposition do amount to the crimes charged in the major, and that both propositions taken together do infer the conclusion, yet the facts are not sufficiently proved to found a verdict, guilty; yet it is impossible to dispute that they may judge also of the legal import and effect of the facts charged in the minor proposition: and if they shall think them insufficient to make out the crime charged in the major proposition, they may, notwithstanding the interlocutor of relevancy, find a verdict not guilty, and thereby acquit the panel, though they could not, consistently with their oath, have returned a verdict not proven. That this is the right of a jury, by the law of Scotland, and has been invariably considered so, ever since the well known case of Carnegie of Finhaven,* no one will dispute; and where a verdict, not guilty, is returned, there is no jurisdiction that can inquire or ascertain whether the jury thought the facts not proved, or were of opinion they were proved, but considered them as not amounting to the crime charged in the major proposition. Again, the jury, if they are satisfied that the facts contained in the minor proposition are established by evidence, may find the libel proven; in which case, the facts having already been found relevant to infer the pains of law, judgment must pass against the panel, unless he can satisfy your lordships that there are some legal grounds for arresting judgment, on which it is the sole province of your lordships to decide; and in determining upon which, you must hold the whole facts charged in the minor proposition as proved. Lastly, If the jury think that some part of the facts charged in the minor proposition is proved, and some not, or are unwilling to find the panel guilty of the crime libelled, albeit the whole facts in the minor proposition are proved to their satisfaction, being doubtful perhaps of their amounting to the crime charged in the major proposition, they may return a special verdict, finding certain facts proven; and then the province of the jury becomes devolved upon the Court, who must determine whether the facts found proven are sufficient for conviction upon the libel as it stands. If these facts amount either precisely, or substantially to the whole facts charged in the minor proposition, things are in the same situation as if the jury had found the libel proven. If the facts fall short of the charge in the minor proposition, then your lordships come to decide whether they amount to the *species facti* which by the interlocutor of relevancy has been found to constitute the crimes charged in the major proposition, and therefore to infer the pains of law concluded for. In this part of your lordships duty, however, your lordships must hold every fact *pro veritate*, that is found proven by the jury, and must take it into consideration in deciding on the verdict. If any fact charged in the minor proposition is found by the verdict not to be proven, it must be held by your lordships as not true; and where the verdict is silent as to any facts charged in the minor proposition, the consequence is the same; your lordships must hold it as found by the jury not to be proven; nor can you do otherwise, without returning a verdict, instead of judging of that which is returned. Thus, to recur to the illustrations formerly given, it must be precisely the same thing, whether the jury find it proven that the panel did with a certain mortal weapon wound the person charged to have been murdered, of which wound he died; but find it not proven that the panel did so maliciously or feloniously, or find it merely proven that the panel did, with

* See this case, *ante*, Vol. 17, p. 73.

a certain mortal weapon, wound the person murdered, of which wound he died; because as in the first alternative, the jury find directly, so in the last they find virtually, that the killing was not malicious and felonious: and supposing even that this could be held not to be implied, by discarding the presumption for innocence, one of the most beautiful attributes of the law, the result would be the same; for the question is, not what the jury may have thought or intended to find, but what they have actually found; and nothing but the finding of a jury either directly or by an inseparable consequence of what they have found, can found a judgment of conviction; and as it cannot be maintained that killing a man, *ex necessitate* involves a malicious or felonious intent; that taking another man's goods, necessarily implies a fraudulent taking for the purpose of appropriating; or that receiving stolen goods, necessarily involves the knowledge of the person who took them that they were stolen; it must be admitted, that where a verdict of a jury finds nothing more proven than that the defunct was killed by the panel, that the goods libelled were taken by him, or that the stolen goods libelled were received by him, conviction can no more follow, than if the verdict had expressly found it not proven, that the panel who killed did so maliciously or feloniously, that the panel who took, did so fraudulently *animo contrectandi*, or that he who received did so fraudulently, knowing the goods to have been stolen. It only remained, therefore, to consider how far these rules, which indisputably apply to every other case, are inapplicable to a criminal prosecution for printing or publishing a libel or seditious writing. To constitute this crime, it is perfectly evident, 1st, That the panel must be guilty of printing or publishing a writing; 2ndly, That that writing must contain libellous or seditious matter; and lastly, That the person accused must print or publish it, understanding it to be seditious, and with an intention of exciting sedition. That there was no occasion, however, in the present case, to use any arguments in support of these propositions, supposing them to require it, because the criminal letters do not merely charge the crime of which the panels are accused, to be the printing and publishing a seditious libel, but the wickedly and feloniously printing and publishing a seditious writing; and this they justly charge to be crimes of a heinous nature, dangerous to the public peace, and severely punishable. The crime charged in the major proposition is, wickedly and maliciously printing and publishing. The minor proposition then states, that Callender had wickedly and feloniously composed and written a seditious writing, intituled, 'The 'Political Progress of Great Britain;' that the panels did wickedly and feloniously print and publish the said seditious writing; and that they did wickedly and feloniously sell and circulate, the said wicked and seditious writing, &c.; and so anxiously does the minor proposition attach the charge of wicked and malicious intention, to the alleged printing and publishing, that even the general and sweeping clause which this, like any other minor proposition contains, charges that at least the said wicked and malicious writing, &c. was wickedly and feloniously printed, published, and sold; and that the panels, or one or other of them, were guilty of the foresaid crimes, or one or other of them; which can have no other meaning but this, that they are guilty of having wickedly and feloniously printed the said wicked and seditious writing. That such being the precise nature of the charge, it was clear, that when your lordships found, in general terms, the libel relevant to infer the pains of law, it was precisely the same thing, as if you had found specifically, that the panels having printed the said pamphlet, the same being a wicked and malicious writing, was relevant to infer the pains of law; and it is evident, that if the libel had not charged the pamphlet to be wicked and seditious, and supposing it to have so charged it, if it had not also charged it to have been printed and published by the panels wickedly and feloniously, your lordships could not have found the libel relevant. Any argument, however, upon this head, is superseded by the admission of the prosecutor himself, that a wicked and felonious printing and publishing was the fact, and only fact alleged against the panels; or, in other words, that to render the libel relevant, it was necessary to charge, that the printing and publishing was wicked and felonious; and, indeed, the greatest part of his lordship's argument is rested on this, that there is no charge of printing and publishing, separate from the charge of feloniously printing and publishing. Such being the charge in the libel, what sort of proof became necessary to support it? Was it not first, that the writing printed and published was wicked and seditious? And if the jury had found it not proved to be wicked and seditious, of what avail would it have been, that they found the panels did print and publish it? It was equally necessary, that it should be proved, or appear from the circumstances proved, that the panels did wickedly and feloniously print and publish it; and though the jury had found the libel to be wicked and seditious, and that the panels printed and published it, what would this have availed if they had at the same time found that it was not proved, that the panels printed and published it with a wicked and felonious intention? Indeed, the learned prosecutor admits, that if they had so found, judgment would not have passed upon the verdict; but he seems to think that the jury's finding simply, that one of the panels printed and published, and the other published only, without finding directly, either

that it was proved that they did not do so maliciously or feloniously; or negatively, that it was not proven, that they did so maliciously or feloniously, cannot have the same effect: and he seems to rest this conclusion on two grounds; 1st. That the printing and publishing a seditious libel, implies a malicious and felonious intention; and 2ndly, That as the indictment charges the printing and publishing to have been malicious and felonious, a special verdict finding that the panels printed or published, implies a finding, that they did so maliciously and feloniously. That both these arguments, however, are fallacious, is obvious: a writing, may be seditious, and yet a person may print and publish it innocently; it may be written in a foreign tongue, which he does not understand, and consequently in printing it, he must be merely an innocent instrument; or, it may discuss topics beyond his capacity or education. Indeed the prosecutor, by libelling that the printing and publishing was malicious and felonious, admits, that it might have been printed without a malicious or felonious intention. Again, it is equally in vain to say, that because the libel charges the panels with having wickedly and feloniously printed and published, finding it proven that they had printed and published, is equivalent to finding that they did so wickedly and feloniously. The conclusion is directly the reverse. Had the crime been murder, and the minor proposition had charged the panels with maliciously and feloniously killing A. B. and the jury had found no more than that he killed him, the prosecutor, indeed, seems to think that this would have been a verdict equal to guilty. It is impossible, however, to maintain such a proposition. As well might it be said, that because a libel for murder, charges a panel with having given A. B. a wound, of which he died, a verdict finding it proven, that he gave A. B. a wound, was not only tantamount to finding that he gave him such wound maliciously and feloniously, but to finding also that he died thereof; for if the verdict is to be stretched beyond its words to include all that is libelled, it will just as effectually imply that the jury have found it proved, that the person wounded died of the wound, as that the person who did so, did it maliciously and feloniously; for the consequence of the wound is just as particularly libelled, as the intent with which it was given. Indeed, by the same rule, if it were charged that a panel having conceived deadly malice against A. B. lay in wait for him, and gave him a wound with a sword, of which he died, and the jury were to find it proved, that the panel lay in wait for A. B., it might be maintained, that this was equivalent to finding that he lay in wait for him, wounded and killed him, as referring to the libel in which all that is charged. The malicious and felonious intention is a fact for the determination of the jury, distinct and separate from the fact charged to have been done with such intention. The probability is, that a man who wounds his neighbour does so maliciously and feloniously, and it is also probable that a man who has been proved to have been maliciously wounded with a mortal weapon, died of the wound; but neither will be presumed, unless so found by the jury, because the wound may have been innocently given, and it may not terminate mortally; and the intention of giving the wound, and the consequence of the wound being charged in the indictment, can never be taken to help out the averment. The prosecutor's argument too is the more inadmissible, because the verdict does not find the pamphlet to be wicked and seditious, which it finds the panels to have printed and published; it says, 'the pamphlet libelled,' that is the pamphlet intituled, 'The Political 'Progress of Great Britain, &c.' not the pamphlet *as* libelled, viz. the said pamphlet being a wicked and seditious writing, &c.; so that, although so dangerous a doctrine could be for a moment listened to, as that verdicts were to be extended by implication, and that judges ought to resort to the evidence, and from thence to supply what jurys may be supposed to have omitted to find, there would be no room for applying it in the present case. The libel says, 1st, That the panels printed and published the pamphlet libelled; 2ndly, That they did so wickedly and feloniously; and lastly, that the pamphlet that they did print and publish was a wicked and seditious writing. All these facts were essential to found a verdict—guilty. They must all, therefore, have been found in a special verdict, in order to lead your lordships to pronounce that judgment against the panels, which a verdict of the Court finding him guilty would warrant; if any one of the facts is awanting, the verdict is insufficient; and it matters not whether that fact be the actual printing and publishing, the malicious intention charged to have given occasion to such publishing, or the seditious nature of the pamphlet printed and published. They are all awanting in the verdict in question, except the actual printing and publishing; and although it could be held that the libellous nature of the pamphlet is found, which the panels do not admit, this would not be by implication, but directly by holding that the verdict, by the words the pamphlet libelled, describes directly the pamphlet charged to have been wickedly and feloniously written by Callender, and to be a seditious writing, containing the wicked and seditious passages libelled. But there is not a single word in the verdict which amounts to finding that the panels printed and published the pamphlet libelled wickedly and feloniously; and could presumptions and suppositions, totally unfounded in any part of the verdict, be admitted as a part of the verdict itself, the

just presumption and supposition is directly the contrary, it being impossible for human ingenuity to figure a reason why, if the jury thought it proved, that the panels printed and published with a wicked and felonious intention, they did not either find them guilty, or the libel proven; or if they chose, without the smallest necessity, to find a special verdict, why they did not find, in so many words, that the panel, James Robertson, did wickedly and maliciously print and publish, and the panel, Walter Berry, did publish only the pamphlet libelled. The verdict, therefore, in sound reason, can bear no other interpretation but this, that the jury saw nothing proved, but that one of the panels printed and published, and the other published the pamphlet mentioned in the indictment; and that instead of taking upon them to judge how far its being proved, that they printed or published without a malicious intention made them guilty of the crime libelled, they chose to find, by a special verdict, the only fact that was proved, and to leave the effect of it to be judged by the Court: that it therefore only remained to say a very few words on the case of Woodfall, which the prosecutor had been pleased to consider as supporting his plea, though with great deference, it appears to have a totally opposite tendency. It will be observed, that as the law of England was held by the judges at the time of that decision, the jury were entitled to judge of nothing in the case of a libel, but the simple question of fact, whether the prisoner was guilty of publishing or printing. The facts whether the printing and publishing was done maliciously and whether the writing contained libellous matter, were at that time erroneously held to be matters of law, competent only to the Court; and accordingly nothing more was, or could be charged against Woodfall, but printing and publishing the paper signed Junius. Lord Mansfield accordingly observes, 'guilty of printing and 'publishing where there is no other charge, is 'guilty, for nothing more is to be found by the 'jury.'—'Where there are more charges than 'one, guilty of some only, is an acquittal as 'to the rest. But in this information, there 'is no charge except for printing and pub-'lishing.'* His lordship therefore properly observed, that had the word *only* been omitted, there would have been no doubt; and it seems to have been his lordship's opinion, and indeed he expresses it, that if by using the word "only," they meant "to say they did not find it a libel," or "did not find the epithets, or did not find any express malicious intent, it would not affect the verdict, because *none* of these things were to be proved, or found either way."† As the law was then understood, all this was perfectly well-founded, because if the jury found the only fact they had a right to judge of, proved, viz. the printing and publishing; their finding, even directly, that there was no malicious intention, could not have affected the verdict; and still less, their not finding the malicious intention; but had the law been understood then to stand, as it is now declared to stand, by the authority of the legislature itself, that the intention as well as the libellous matter, whether it is considered as matter of fact or matter of law, is within the province of the jury to decide upon, could the learned judge have said, that the jury's meaning to say, that they did not find any malicious intent, would not affect the verdict, because that was not the thing to be found either way? And is it not equally clear, that if, in that case, the charge had been not simply printing and publishing, but wickedly and feloniously printing and publishing, and the verdict had been silent as to the malicious intention, the learned judge could not have said as he does, 'there can be 'no judgment of acquittal, because this fact 'found by the jury is the very crime they 'were to try;' for the fact would not have been printing and publishing, but wickedly and feloniously printing and publishing. On the contrary, his lordship's opinion must have been directly the reverse. Let lord Mansfield's reasoning then be applied to the present case; though his opinion proceeded upon an erroneous view of the law of England, which never had an existence as to the law of Scotland; and if it had, would have been removed by the late statute. The charge in this case is double; it is of a wicked and malicious intention, and of carrying it into effect, by printing and publishing. The panels are not found guilty of both; only one of them, viz. printing and publishing, is found proved against them; consequently, according to his lordship's opinion, they are acquitted of the other. It is sufficient however, that it is not found proved that the printing was wicked and felonious: for wicked and felonious printing and publishing being the charge, a verdict which finds that the panels printed and published, can just as little afford ground for conviction, as a verdict finding them guilty of printing and publishing *only*, which the prosecutor admits, would have supported the objection now made, or a verdict expressly finding a wicked and felonious intention not proven, or even finding directly that the panels printed and published the pamphlets libelled, without any wicked or felonious intention. The judgment therefore, in the case of Woodfall when properly attended to, supports the present objection, and, at the same time, gives a striking proof how favourably the judges of England decide upon any objection to a verdict in a criminal case, as it is evident that the information having charged nothing but printing and publishing, and the prisoner having been found guilty of printing

* *Antè*. Vol. 20, pp. 919, 920.
† Vol. 20, p. 920.

and publishing, which was the whole charge, the insertion of the word *only* in the verdict, as it could not be supposed to apply to any thing as to which the jury had a right to find, it did by no means qualify the verdict, and only involved it in a seeming obscurity, which in no degree affected the sense or import of it.

March 18th, 1793.

Intron.

Walter Berry, bookseller, South Bridge-street, Edinburgh; and

James Robertson, also bookseller there, and printer in the Horsewynd Edinburgh—Panels.

Indicted and accused as in former sederunts.

The verdict of assize being read over, the lords proceeded to take into consideration the minutes of debate upon the import thereof before recorded, and pronounced the following opinions:

Lord *Henderland* thought that the verdict was to be understood as finding, with regard to Robertson, that the printing and publishing had been wicked and felonious, the *malus animus* being necessarily inferred from the printing and publishing; but he thought the result was different in the case of Berry, who was found only to have published. One may utter a bank note, not knowing that it was forged; and so one may publish a book, while ignorant of its real tendency. In the Scots acts relative to Leasing-making, his lordship observed, something is required to be done necessarily inferring *malus animus*: and in various cases this distinction had been observed, as in the case of Fraser, and that of Mr. Dundas in 1712: so too Buchanan's book, *de jure Regni*, was suppressed by act of parliament, without any punishment being inflicted upon the publisher, act 1584, c. 134.

Lord *Eskgrove*.—This is a special verdict, and from the terms of it a seditious intent is necessarily implied, so far as regards Robertson, from the reference to the libel, where the pamphlet was described as wicked and seditious. The case is the same as if the jury had found Robertson guilty of printing and publishing a seditious libel. This cannot be done without a *malus animus*, every person being called upon to consider what he prints and publishes: there is more doubt as to Berry. We have no law here as in England, which makes the publishing and selling of a libel a crime; therefore, where there is a verdict of publishing, we must decide from the circumstances of the case; and if the writing be very short, as a seditious handbill, a knowledge of its contents will be necessarily inferred from the publication; but here the pamphlet being of some size, the same inference may not be warrantably drawn.

Lord *Dunsinnan*—agreed with the judges who had spoken as to the difference between the two panels.

Lord *Abercromby*.—Our law in this respect has always been different from the common law of England, where, in the case of libel, the jury till a late period were judges of the fact, but not of the law. With us, even in matters of libel, the jury have always determined both as to the law and the fact. In this case, if the jury had thought either of the panels not guilty, their verdict would have been in different terms. To publish a seditious libel is a crime at common law, every person being presumed to know the contents of what he publishes, even although the book may be written in a language unknown to him; and in some respects the publisher is more guilty than the printer, the crime by his means becoming complete, and the injury to the public put beyond the possibility of recall.

The question here is, whether the verdict is altogether defective? I do not think so; I cannot go to the proof, but I may to the indictment or libel, and must consider the case in the same light as if the jury, instead of a reference to the pamphlet, had recited it: the jury might have found the seditious intent proved, but in my opinion they did better by a special finding as to the fact, leaving the Court from thence to judge of the intent; nor can I distinguish between the two panels so as to acquit Berry, against whom a finding as to the publishing only has been given. Every publisher is presumed in law to know the contents of what he publishes, in the same manner as the user and utterer of a forged deed is presumed to be art and part in the forgery, the *onus probandi* of the contrary being thrown upon him. This is the law, and it is expedient that it should be so.

The *Lord Justice Clerk* (Braxfield) delivered his opinion nearly in the same words.*

The following Interlocutor was then pronounced:

The lord justice clerk and lords commis-

* "The Court were not unanimous, but the majority were of opinion, that by the verdict's referring to the pamphlet libelled, it must be expounded by reference to the indictment, and must be viewed in the same way as if the pamphlet itself had been engrossed in the verdict. That being the case, the publishing and printing such a pamphlet, or the publishing only (which was all that was found against Berry), was unquestionably punishable. The Court in this case took occasion to observe, that, by the law of Scotland, no distinction ever was made between the case of a libel, and of any other crime; the jury's province being always understood to be, to take into view the nature of the writing, as well as the fact of publishing."—*Burnett on the Criminal Laws of Scotland*, p. 243.

sioners of justiciary, having considered the verdict of assize dated the 18th, and returned the 19th day of February last, in the trial of Walter Berry and James Robertson, panels, whereby the assize all in one voice find it proven that the said James Robertson did print and publish, and the said Walter Berry did publish only the pamphlet libelled on; with the minutes of debate upon the import of the said verdict given in in consequence of the order of Court, of date the said 19th day of February last, and before recorded; they repel the objections offered in arrest of judgment, and in respect of the said verdict, decern and adjudge the said Walter Berry and James Robertson to be carried from the bar to the Tolbooth of Edinburgh, therein to be detained, the said James Robertson for the space of six months, and the said Walter Berry for the space of three months from this date, and thereafter till they shall find sufficient caution and surety acted in the books of adjournal for their good behaviour for the space of three years after their liberation respectively, and that under the penalty of one hundred pounds sterling each; and upon elapsing of the said periods of imprisonment, and finding caution in manner foresaid, grant warrant to, and ordain the magistrates of Edinburgh, and keepers of their Tolbooth, to set them at liberty.

(Signed) ROBERT M'QUEEN, I. P. D.

I extract from the Journal of the House of Lords the following entries relating to this case:

ROBERTSON and BERRY *against* his MAJESTY'S ADVOCATE.

"*Die Mercurii*, 1° *Maii*, A. D. 1793.—An appeal of James Robertson, bookseller in Edinburgh, and printer in the Horsewynd there, and Walter Berry, bookseller, on South Bridge-street, Edinburgh, now prisoners in the Tolbooth of Edinburgh, was presented and read; complaining of two interlocutors or judgments of the court of justiciary in Scotland, of the 18th of February and 18th of March, 1793; and praying, 'That the same may be reversed, varied, or altered, or that the petitioners may have such other relief in the premises, as to their lordships, in their great wisdom, shall seem meet.'

"Ordered, That the said appeal be referred to a committee, to consider and report, 'whether the same ought to be entertained.'

"Ordered, That the petitioners be at liberty to be heard by one counsel before the said committee if they think fit; and that notice thereof be given to the lord advocate for Scotland. Their lordships, or any five of them, to meet on Monday next at the usual time and place, and to adjourn as they please.

"Ordered, That all the lords who have been or shall be present this session, be of the said committee.

"*Lunæ*, 6° *Maii*.—Ordered, That the sitting of the committee, to whom is referred the appeal of James Robertson, and Walter Berry, prisoners in the Tolbooth of Edinburgh, from the court of justiciary in Scotland, presented on the 1st of this instant, May, which stands appointed for this day, be put off to Wednesday next.

"*Mercurii* 8° *Maii*.—The lord Cathcart reported from the Lords committees, appointed to consider and report whether the appeal of James Robertson, bookseller in Edinburgh, and printer in the Horsewynd there, and Walter Berry, bookseller in South Bridge-street, Edinburgh, now prisoners in the Tolbooth of Edinburgh, complaining of two interlocutors or judgments of the court of justiciary in Scotland, of the 18th of February and 18th of March 1793, and praying, 'That 'the same may be reversed;' ought to be entertained: 'That the committee had met, 'and had heard counsel for and against 'the petition, and taken into consideration 'the matter to them referred, and are of opi-'nion, that this petition of appeal ought not 'to be entertained.'* Which report being read by the clerk, was agreed to by the House.

"Ordered, by the Lords spiritual and temporal, in parliament assembled, That this petition of appeal ought not to be received."

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* As to this see the note to the case of Nairne and Ogilvie, *antè*. Vol. 19, p. 1334.

593. Proceedings on the Trial of Thomas Muir, Esq., the Younger, of Hunter's-Hill, on an Indictment charging him with Sedition. Tried before the High Court of Justiciary at Edinburgh, on the 30th and 31st Days of August: 33 George III. A. D. 1793.*

Friday, August 30th, 1793.

A FEW minutes after ten o'clock in the morning the Court was opened by lord justice clerk [M'Queen] and four lords commissioners of justiciary, lord Henderland, lord Swinton, lord Dunsinnan, and lord Abercromby. Upon calling Robert Dundas, esq. his majesty's advocate for his majesty's interest against Thomas Muir, Mr. Muir did not answer to his name, on which the lord advocate rose to address the Court, but Mr. Muir's agent said he would appear in a few minutes: and Mr. Muir presently came into court.

Mr. Muir was reprimanded for keeping the Court waiting; and was then desired to attend to the indictment, which the depute clerk of court read as follows:

"George, &c. Whereas is humbly meant and complained to us by our right trusty Robert Dundas, esq. of Arniston, our advocate for our interest, upon Thomas Muir, younger, of Huntershill, that, by the laws of this and every other well-governed realm, the wickedly and feloniously exciting, by means of seditious speeches and harangues, a spirit of disloyalty and disaffection to the king and the established government; more especially when such speeches and harangues are addressed to meetings or convocations of persons, brought together by no lawful authority and uttered by one who is the chief instrument of calling together such meetings; as also, the wickedly and feloniously advising and exhorting persons to purchase and peruse seditious and wicked publications and writings, calculated to produce a spirit of disloyalty and disaffection to the king and government; as also, the wickedly and feloniously distributing or circulating any seditious writing or publication of the tendency aforesaid; or the causing to distribute or circulate any such seditious writing or publication; as also, the wickedly and feloniously producing and reading aloud, in a public meeting or convocation of persons, a seditious and inflammatory writing, tending to produce in the minds of the people a spirit of insurrection and of opposition to the established government; and, the publicly approving of, and recommending, in said meeting, such seditious and inflammatory writing, are all and each, or one or other of them, crimes of an heinous nature, dangerous to the public peace, and severely punishable: yet true it is, and of verity, that the said Thomas Muir is guilty actor, or art and part, of all and each, or one or other, of the said crimes, aggravated as aforesaid: In so far as on the 8d day of November, 1792, or on one or other of the days of that month, or of October immediately preceding, or of December immediately following, the said Thomas Muir having been present at a meeting in the town of Kirkintilloch, parish of Kirkintilloch, and county of Dunbarton, denominated, 'A Society for Reform,' or bearing some such name; and also, having some time during the course of the said month of November aforesaid, been present at another meeting at Miltoun, parish of Campsie, and county of Stirling, which meeting was also denominated, 'A Society for Reform,' or bore some such name (and both of which societies abovementioned the said Thomas Muir was the chief mean of instituting and forming); he did, at times and places aforesaid, with wicked and seditious intention, address and harangue the said meetings; in which speeches and harangues, the said Thomas Muir did seditiously endeavour to represent the government of this country as oppressive and tyrannical, and the legislative body of the state as venal and corrupt, particularly by instituting a comparison between the pretended existing government of France and the constitution of Great Britain, with respect to the expenses necessary for carrying on the functions of government, he endeavoured to vilify the monarchical part of the constitution, and to represent it as useless, cumbersome and expensive: at least the said Thomas Muir did use words and arguments of the above seditious tendency and import. Further, the said Thomas Muir did, some time during the course of September, October or November, 1792, in the town of Glasgow, in the county of Lanark, Kirkintilloch in the parish of Kirkintilloch and county of Dunbarton, and Miltoun in the parish of Campsie and county of Stirling aforesaid, and elsewhere, wickedly and feloniously exhort and advise several persons to purchase and peruse various seditious pamphlets and writings; particularly the

* Of this trial several accounts,—not however materially differing, and in no instance contradictory,—were published at the time of its occurrence: these I have carefully examined and compared; and from them the report here printed is compiled.

said Thomas Muir did, some time in the months aforesaid, within his father's house at Glasgow aforesaid, or some other place to the public prosecutor unknown, wickedly and feloniously advise and exhort John Muir, sen., late hatter in Glasgow, Thomas Wilson, barber in Glasgow, and John Barclay, residing in the parish of Calder and county of Lanark, to read Paine's Rights of Man, and to purchase the same; which book or pamphlet, intituled Paine's Rights of Man, is a most wicked and seditious publication, calculated to vilify the constitution of this country, to produce a spirit of insurrection among the people, and to stir them up to acts of outrage and opposition to the established government. Further, the said Thomas Muir did, in the course of the months of September, October, or November aforesaid, wickedly and feloniously distribute and circulate, or cause to be distributed and circulated, in the towns of Glasgow, Kirkintilloch, and Miltoun aforesaid, and at Lenoxtoun in the said parish of Campsie and county of Stirling, or elsewhere, a number of seditious and inflammatory writings or pamphlets; particularly a book or pamphlet intituled, 'The works of Thomas Paine, esq.' Also, a writing or publication intituled, 'A 'Declaration of Rights, and an Address to the 'People, approved of by a number of the 'Friends of Reform in Paisley;' also a paper or publication intituled, 'A Dialogue betwixt 'the Governors and the Governed;' also, a paper or publication intituled, 'The Patriot:' particularly the said Thomas Muir did, some time in the months of October or November aforesaid, at Kirkintilloch aforesaid, or at some other place to the public prosecutor unknown, wickedly and feloniously deliver and put into the hands of Henry Freeland, weaver in Kirkintilloch, a seditious book or pamphlet, intituled, 'The works of Thomas Paine, esq., which the said Henry Freeland carried away with him; which book or pamphlet, along with the other wicked, seditious, and inflammatory passages contains the following:

Paine's Works, p. 13. "Monarchy is ranked in Scripture as one of the sins of the Jews, for which a curse in reserve is denounced against them."

P. 20. "In short, monarchy and succession have laid not this or that kingdom only; but the world, in blood, and ashes; it is a form of government which the word of God bears testimony against, and blood will attend it."

P. 21. "Why is the constitution of England sickly, but because monarchy hath poisoned the republic?—the Crown hath engrossed the Commons.

"In England, a king hath little more to do than to make war, and to give away places; which in plain terms, is to impoverish the nation, and set it together by the ears. A pretty business indeed for a man to be allowed eight hundred thousand pounds sterling a year for, and worshipped into the bargain! Of more worth is one honest man to society, and in the sight of God, than all the crowned ruffians that ever lived."

P. 78. "What are the present governments in Europe but a scene of iniquity and oppression. What is that of England? Do not its own inhabitants say it is a market where every man has his price, and where corruption is common traffic, at the expense of a deluded people? No wonder then that the French Revolution is traduced."

P. 85. "But the second head, that of a nation establishing a particular family with hereditary powers, does not present itself as despotism, on the first reflection; but if men will permit a second reflection to take place, and carry that reflection forward but one remove out of their own persons to that of their offspring, they will then see that hereditary succession becomes in its consequences the same despotism to others which they reprobate it for themselves."

P. 86. "It operates to preclude the consent of the succeeding generation, and the preclusion of consent is despotism."

Part II. p. 30. "All hereditary government is in its nature tyranny. An heritable crown, or an heritable throne, or by whatever fanciful name such things may be called, have no other significant explanation, than that mankind are heritable property. To inherit a government is to inherit the people, as if they were flocks and herds."

P. 51. "The act called the Bill of Rights comes here into view. What is it but a bargain which the parts of the government made with each other to divide powers, profits, and privileges? You shall have so much, and I will have the rest; and with respect to the nation, it said, for your share you shall have the right of petitioning. This being the case, the Bill of Rights is more properly a Bill of Wrongs, and of Insult."

P. 54. "The attention of the government of England (for I rather choose to call it by this name, than the English government) appears, since its political connexion with Germany, to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purposes. Domestic concerns are neglected; and with respect to regular law, there is scarcely such a thing."

P. 126. "The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick, for men, at the expense of a million a year, who understood neither her laws, her language, nor her interest, and whose capacities would scarcely have fitted them for the office of a parish constable. If government could be trusted to such hands, it must be some easy and simple thing indeed, and materials fit for all the purposes may be found in every town and village in England."

And the said Thomas Muir did, some time in October or November aforesaid, within his own or his father's house at Huntershill, in

the county of Lanark, or at some other place to the public prosecutor unknown, wickedly and feloniously put into the hands of William Muir, weaver in Kirkintilloch, eleven numbers of a seditious book or pamphlet, intituled, "The Patriot," which the said William Muir carried away with him, and kept possession of; and which book or pamphlet contained among others the following seditious passages:

Patriot, No. V. p. 168 and 169. "They have lost the distinguishing character between freedom and slaves; they have lost the distinguishing character of Englishmen! They have lost what the most tyrannical kings of England would never force from them! They have, in a great measure, lost what their forefathers spent their blood and treasure to defend—the greatest jewel that any people can possess—their constitutional and natural liberty—their birth-right and inheritance derived from God and nature! They have lost the constitutional means of redress for all their grievances! What is it indeed they have not lost by that hated septennial law, which has fettered down the elective power of the people, like a dog to a manger, who is only suffered to go abroad once in seven years for an airing!"

No. VI. p. 184 and 185. "Rouse then, ye Britons! Awake from the slumbering state of apathy in which you have so long suffered yourselves ingloriously to remain! Open your eyes to the injuries which have been heaped on you; and assert your right to have them redressed. Evince to all the world that you are the true descendants and sons of your once famed glorious ancestors; prove yourselves worthy to inherit, in its highest degree of perfection, that constitution, which they raised by their valour, and cemented with their blood:—Raise your voice—the voice of the people—and sound in the ears of tyrants and their abettors, that you will be free and you are so: That voice is the noble, the mighty fiat, which none can, or dare to, attempt to gainsay."

No. XI. p. 375. "And what would he (earl of Chatham) have thought, if he had lived to hear people now talk of a happy and glorious constitution, evidently built upon corruption, and supported by peculation? And what would he have conjectured, had he seen a proclamation issued to intimidate and prevent the people from exercising their right of conferring upon, and publishing their grievances!"

No. XII. p. 414. "But we should ask, here, what is the difference between a king of England taxing his subjects without consent of parliament, and taxing them with the consent of parliament, which parliament, the king, or his minister can influence as he pleases to approve of war or peace, and to vote such supplies as may be required; no matter how grievous or burthensome, nor for what base or corrupt purposes they are granted. One would think that the latter method is equally oppressive, and deserving of reprobation; for being done with a seeming legality, and under a form and semblance of constitutional procedure, the people are made parties to their own oppression, and the greatest insults are added to the heaviest injuries."

P. 419. "Here we see clearly the origin of the immense overgrown landed property of our race of nobles and rich commoners; a right founded in murder, desolation, rapine, and proscription of the first owners and holders of the landed property, in this kingdom, among our Saxon ancestors; and by this we may easily trace the means by which our nobility are at this moment not only in possession of one branch of the legislature by hereditary claim, but by which they have also monopolised, with the addition of a few rich commoners, the majority of voice in the House of Commons, which, shame to tell, is barefacedly called the representation of the people. This we pledge ourselves to prove to the satisfaction of our readers in the course of this work, and indeed of a few more numbers." And the said paper or publication, intituled, "A Declaration of Rights, and Address to the people, approved of by a number of the Friends of Reform in Paisley," distributed and circulated as aforesaid, contained the following passages:

Paisley Declaration, p. 4. "1. Being subject to the legislation of persons whom other men have placed over you, it is evident you are denied that which is the right of every one, and without which none are free. For to be enslaved, is to have no will of your own in the choice of those law-makers, which have power over your properties, your families, your lives, and liberties. Those who have no votes for electing representatives are not free, as the rights of nature, and the principles of our constitution require, but are enslaved to the representatives of those who have votes."

P. 5. "3. Should you not associate in your own cause, and with one voice? the voice of united millions demand reform in the national representation."

P. 8. "10. But such a parliament cannot be had unless we will revert to the first principles of our constitution, which we have so shamefully abandoned. A government where the executive and legislative power meet in a single person has no more pretence to freedom: it is perfect despotism: and the people who submit to it are in a state of slavery. If the will of the prince must be law, in what manner it is announced, whether the mandate issue directly from the throne itself, or through the medium of the House of Commons, is a matter of indifference. If that assembly is no longer the representative of the people, the constitution is changed. If those men who are said to represent us are only the registers of the royal edicts, the government is degenerated into an absolute

monarchy. Since electing a parliament is our only security against an arbitrary power in the crown, election itself must be not only the common right, but the common duty, of all the people."

P. 15. "But the evils of long parliaments —are they not written in tears and in blood? And have they left us aught of liberty but the name? With the poor exception, then, of one year of freedom in seven, and that in favour of not one-seventh part of the nation, it is demonstrated that you are constantly taxed without being represented, and compelled to obey laws to which you never gave assent. Are not these the very definitions of slavery? And, are you not thus degraded to a level with the very cattle in the field, and the sheep in the fold; which are a property to those who rule over them, and have no power to say, why are we bought and sold? Why are we yoked and laden with heavy burthens? Why are we fleeced and led to the slaughter? Demand then with one voice, friends and countrymen, that share in making your own laws to which, by the constitution and the laws of nature, you are entitled; call for the bill which would restore your lost constitution and recover your stolen rights! Pursue the only course which can ever effect any considerable reduction of debts and taxes, or materially advance the interest of manufactures and commerce! In short, be free, prosperous and happy! and give your posterity the same cause to revere your memories, as you have to bless these progenitors who left you an inheritance in a free constitution."

And the above writing or publication, intituled, "A Dialogue between the Governors and the Governed," distributed and circulated as aforesaid, contained among others, the following passage:

Dialogues. "*Civil Governors.* The law enacts that ye be submissive.

"*People.* The law is the general will, a new order.

"*Civil Governors.* You will be a rebellious people.

"*People.* Nations cannot revolt; tyrants are the only rebels.

"*Civil Governors.* The King is with us, and he commands you to submit.

"*People.* The kingly office originates in the people, who elect one of themselves to execute it for the general good. Kings, therefore, are essentially indivisible from their nations. The king of ours, then, cannot be with you; you only possess his phantom. And the military governors stepping forward, said, 'The people are timid, let us menace 'them, they only obey force. Soldiers, chas-'tise this insolent rabble.'

"*People.* Soldiers, you are of our own blood! Will you strike your brothers? If the people perish, who will maintain the army?—And the soldiers grounding their arms, said to their chiefs, 'We also are the 'people, we are the enemies of ——.' Whereupon the ecclesiastical governors said, 'There is now but one resource left. The 'people are superstitious; we must frighten 'them with the name of God, and of reli-'gion.—Our dearly beloved brethren, our 'children! God has appointed us to govern 'you.'

"*People.* Produce to us your heavenly powers.

"*Priests.* You must have faith, reason will lead you astray.

"*People.* Do you govern then without reason?

"*Priests.* God ordains peace; religion prescribes obedience.

"*People.* Peace presupposes justice; obedience has a right to know the law it bows to.

"*Priests.* Man is only born into this world to suffer.

"*People.* Do you then set us the example.

"*Priests.* Will you live without God and without kings?

"*People.* We will live without tyrants, without impostors."

Further, the said Thomas Muir having, upon the 11th, 12th, or 13th days of December 1792, or on one or other of the days of that month, been present at a meeting calling itself "The Convention of Delegates of the Associated Friends of the People," or assuming some such name; which meeting was held in a room commonly called Laurie's room, in James's-court, in the city of Edinburgh, he did then and there, with a wicked and seditious design, produce, and read aloud to the said meeting, a writing or paper, intituled, "Address from the Society of United Irishmen in Dublin, to the Delegates for promoting a Reform in Scotland." Which writing or paper was of a most inflammatory and seditious tendency, falsely and insidiously representing the Irish and Scotch nations as in a state of downright oppression, and exciting the people rebelliously to rise up and oppose the government. And which paper or writing, among other passages, contained the following:

P. 1. "We take the liberty of addressing you in the spirit of civic union, in the fellowship of a just and common cause. We greatly rejoice that the spirit of freedom moves over the surface of Scotland, that light seems to break from the chaos of her internal government, and that a country so respectable for her attainments in science, in arts, and in arms, for men of literary eminence, for the intelligence and morality of her people, now acts from a conviction of the union between virtue, letters, and liberty; and now rises to distinction, not by a calm, contented, secret wish for a reform in parliament, but by openly, actively, and urgently willing it, with the unity and energy of an embodied nation. We rejoice that you do not consider yourselves as merged and melted down into

another country, but that in this great national question you are still Scotland."—Also,

P. 3. "We will lay open to you our hearts: Our cause is your cause. If there is to be a struggle between us, let it be which nation shall be foremost in the race of mind. Let this be the noble animosity kindled between us, who shall first attain that free constitution from which both are equi-distant, Who shall first be the saviour of the empire. The sense of both countries, with respect to the intolerable abuses of the constitution, has been clearly manifested, and proves, that our political situations are not dissimilar, that our rights and wrongs are the same."—Also,

P. 9. "We will not be the dupes of such ignoble artifices. We see this scheme, of strengthening political persecution and state inquisition, by a fresh infusion of religious fanaticism. But we will unite, and we will be free. Universal emancipation, with representative legislature, is the polar principle which guides our Society, and shall guide it, through all the tumult of factions, and fluctuations of parties. It is not upon a coalition of opposition with ministry that we depend, but upon a coalition of Irishmen with Irishmen; and in that coalition alone we find an object worthy of reform, and, at the same time, the strength and sinew both to attain and secure it. It is not upon external circumstances, upon the pledge of man or minister, we depend, but upon the internal energy of the Irish nation.—We will not buy or borrow liberty from America or from France, but manufacture it for ourselves, and work it up with those materials which the hearts of Irishmen furnish them with at home.—We do not worship the British, far less the Irish constitution, as sent down from heaven; but we consider it as human workmanship, which man has made, and man can mend. An unalterable constitution, whatever be its nature, must be despotism. It is not the constitution, but the people, which ought to be inviolable; and it is time to recognise and renovate the rights of the English, the Scotch, and the Irish nations."—Also,

P. 11. "You have our ideas—answer us, and that quickly.—This is not a time to procrastinate.—Your illustrious Fletcher has said, that the liberties of a people are not to be secured without passing through great difficulties; and no toil or labour ought to be declined to preserve a nation from slavery. He spoke well; and we add, that it is incumbent on every nation who adventures into a conflict for freedom, to remember, it is on the event (however absurdly) depends the estimation of public opinion; honour and immortality, if fortunate; if otherwise, infamy and oblivion. Let this check the rashness that rushes unadvisedly into the committee, of national character; or, if that be already made, let the same consideration impel us with active, not passive perseverance, with manly confidence, and calm determination, smiling with equal scorn at the bluster of official arrogance, and the whispers of private malevolence, until we have planted the flag of freedom on the summit, and are at once victorious and secure."

"*M'Alister*, 102, *Grafton-street*, *Printer*."

Which seditious paper or writing, containing, among others, the above passages, the said Thomas Muir did, immediately thereafter, wickedly and feloniously, propose should be received, and lie on the table of the said meeting; and did also move, that the thanks of the meeting, or some acknowledgment, should be returned to those from whom the foresaid paper or address came. And moreover, the said Thomas Muir did, then and there, wickedly and feloniously express his approbation of the sentiments contained in the said paper or address, or, at least, did declare, that it was altogether harmless, or used words and expressions of a similar import, notwithstanding that many of those who were present at the foresaid meeting did oppose and object to the foresaid paper or address being read, or allowed to lie on the table, or in any shape acknowledged by the said meeting. And the said Thomas Muir having been brought before John Pringle, esq. our sheriff-depute of the county of Edinburgh, upon the 2d day of January 1793, did, in his presence, emit and sign a declaration: but immediately thereafter, the said Thomas Muir, conscious of his guilt in the premises, did, in order to evade punishment, abscond and leave the kingdom; and having been indicted at the instance of our advocate, for our interest, to stand trial before the high court of justiciary, upon the 11th day of February last, the diet was afterwards continued to the 25th of that month, to give him the better opportunity of appearing, if he was so disposed; but the said Thomas Muir having notwithstanding failed to appear, he was, on the 25th of February last, fugitate by a sentence of the said high court. And the said Thomas Muir having lately, in a private and clandestine manner, come into this country, by way of Ireland, he was discovered at Portpatrick, apprehended, and committed prisoner to the Tolbooth of Stranraer, in the county of Wigton, on the 30th, or some other day in the month of July last; and, at same time, sundry papers found in his possession were, together with his pocket-book, sealed up in the presence of William Ross, esq. one of our justices of peace for the shire of Wigton, under the seals of the said Thomas Muir and the town seal of Stranraer. And the said Thomas Muir having been afterwards transmitted to Edinburgh, by warrant of our high court of justiciary, along with the said pocket-book and papers, the sealed parcel containing the same was opened in presence of him, the said Thomas Muir, and Harry Davidson, esq.

sheriff-substitute of the county of Edinburgh, upon the 10th day of August current, the seals having been previously inspected by the said Thomas Muir, and declared by him to be entire, and an inventory of the contents thereof was made, and signed by the said Thomas Muir and Harry Davidson, and others then present. And the above-mentioned declarations emitted by the said Thomas Muir before the sheriff-depute of Edinburgh, upon the 2d of January 1793, together with a copy of "Paine's Works," recommended and circulated as aforesaid; as also, a copy of the said "Declaration of Rights, and an Address to the People, approved of by a number of the Friends of Reform in Paisley," circulated as aforesaid; as also, a copy of the "Dialogue between the Governors and the Governed," circulated as aforesaid; as also a copy of "The Patriot," circulated as aforesaid; as also, a copy of "the Address from the Society of United "Irishmen in Dublin, to the Delegates for "promoting a Reform in Scotland," produced, read, and approved of by the said Thomas Muir, in manner aforesaid, and attested by the subscriptions of James Denholm, James Campbell, and others; and also, a book, intituled, "The Book of the Records of the Association of the Friends of the Constitution and of the People of Kirkintilloch, volume 1st, entered at Kirkintilloch, November 1792;" and also the foresaid inventory, made up before the said Thomas Muir and the Sheriff-substitute of Edinburgh, upon the said 10th day of August current, with the whole articles and papers therein contained and referred to, will all be used in evidence against the said Thomas Muir, and will for that purpose in due time be lodged with the clerk of the high court of justiciary, before which he is to be tried, that he may have an opportunity of seeing the same. At least, times and places above-mentioned, the said seditious speeches and harangues were uttered, the said seditious books or pamphlets, recommended to be purchased and perused, the said seditious books or pamphlets, circulated and distributed, as aforesaid, and the said wicked and inflammatory address produced, read, recommended, and approved of, in manner above-mentioned; and the said Thomas Muir is guilty actor, or art and part, of all and each, or one or other of the foresaid crimes. All which, or part thereof, being found proven, by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary to be holden by them within the criminal court-house of Edinburgh, the said Thomas Muir ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

LIST OF WITNESSES.

John Brown, weaver at Lenpoxtoun, in the parish of Campsie, and county of Stirling.
John Speir, weaver at Lennoxtoun aforesaid.
William Robertson, excise-officer at Lennoxtoun aforesaid.
Francis Clark, callico printer, at Lennox Mill, parish and county aforesaid.
Alexander Johnston, bleacher at Kincaid Printfield, in parish of Campsie aforesaid.
Henry Freeland, weaver in Kirkintilloch.
William Muir, weaver in Kirkintilloch.
John Scott, wright in Kirkintilloch.
Robert Weddell, weaver in Kirkintilloch.
James Baird, hosier in Kirkintilloch.
The Rev. Mr. William Dunn, minister of Kirkintilloch.
John Scott, weaver in Townhead of Kirkintilloch.
William Knox, weaver there.
James Muir, student of divinity residing at Campsie.
Anne Fisher servant, or late servant, to Mr. John Carlisle, collector of the cess in Glasgow.
Thomas Wilson, barber in Glasgow.
William Reid, bookseller and stationer in Glasgow.
James Brash, bookseller and stationer there.
David Blair, manufacturer in Glasgow.
John Muir, senior, late hat-manufacturer, presently residing in Glasgow.
John Barclay, residing in the parish of Calder, in the county of Lanark, and one of the elders of the said parish.
The Rev. Mr. James Lapslie, minister of Campsie.
James Campbell, writer to the signet.
James Denholm, writer in Edinburgh.
Hugh Bell, brewer in Edinburgh.
John Buchanan, baker in Canongate of Edinburgh.
Mr. John Morthland, advocate.
William Skirving of Strathruddie, residing in Edinburgh.
Lieutenant-colonel William Dalrymple of Fordell.
Mr. Robert Forsyth, advocate.
Richard Fowler, student of medicine, residing, or lately residing in Edinburgh.
John Pringle, esq. sheriff-depute of the county of Edinburgh.
William Scott, solicitor-at-law, and procurator-fiscal of the said county of Edinburgh.
Joseph Mack, writer in Edinburgh.
Sir James Colquhoun of Luss, baronet, sheriff-depute of the shire of Dunbarton.
William Honeyman, esq. sheriff-depute of the shire of Lanark.
Harry Davidson, esq. sheriff-substitute of the county of Edinburgh.
George Williamson, messenger in Edinburgh.
Mr. James Carmichael, commander of the Justice hulk, in the service of the board of customs.
William Ross, esq. one of the justices of peace for the county of Wigton.

To this indictment Mr. Muir pleaded, Not Guilty.

The *Lord Justice Clerk* then asked who was his counsel; and if he or they had any objection, why the said indictment should not be remitted to the knowledge of an assize?

Mr. *Muir*. My lord, I am my own counsel;* nor shall I now trouble the Court with any observations whatever, but reserve myself entirely till I come to address the jury, whom in this country I hold to be judges both of the law and the fact.

The *Lord Justice Clerk* then demanded what exculpatory proof Mr. Muir proposed to set up, as it must now be stated, otherwise it would not be allowed.

Mr. *Muir* observed, that he had shortly given in writing the exculpatory proof he intended to offer; that he had been accused of seditious harangues, and of circulating improper books, and that he intended to prove the reverse.

The *Court* then desired to know, as it might save trouble, whether he admitted that he had recommended the particular books libelled? To which he answered in the negative; but that he had advised reading books on all sides of the question.

In point of form, it is required in Scotland, that the person accused should communicate upon the evening preceding the trial, in writing, the substance of his defence, with a list of the witnesses intended to be adduced in exculpation. Mr. Muir had complied with this rule, and the clerk of court read the following

DEFENCES.

The criminal libel is false and injurious; so far from exciting the people to riot and insurrection, it can easily be proved, by a numerous list of witnesses, that, upon every occasion, the panel exhorted them to pursue measures moderate, legal, peaceable, and constitutional. The charge of distributing seditious publications, and of advising the people to read them, is equally false and calumnious. The panel admits, that on the great national question, concerning an equal representation of the people in the House of Commons, he exerted every effort to procure in that House, a full, fair, and equal representation of the people, as he considered it to be a measure (and still does) the most salutary for the interest of his country. But the panel offers to prove, that as he considered the information of the people to be the chief thing requisite to accomplish this great object, he uniformly advised them to read every publication, upon either side, which the important question of parliamentary reform had occasioned.

(Signed) THOMAS MUIR.

Annexed are a list of witnesses in exculpation.

Under protestation to add and eik.

LIST OF WITNESSES
adduced in Exculpation.

William Riddle, baker in Glasgow.
John Hamilton, manufacturer, St. Andrew's-square, Glasgow.
David Dale, jun. manufacturer there.
Basil Ronald, of Broomlone, glover in Glasgow.
Alexander Park, writer in Glasgow.
George Waddel, manufacturer in Glasgow.
George Russel, merchant in Gallowgate, Glasgow.
John Brock, manufacturer in Glasgow.
John Wilson, shoemaker in Gorbals of Glasgow.
John Lockhart, mason there.
Walter Hart, heritor in Tradestown, Glasgow.
Hugh Moodie, spirit dealer in Glasgow.
James Cooper, shoemaker, Glasgow.
John Gray, manufacturer, Glasgow.
Daniel M'Arthur, one of the masters of the grammar-school, Glasgow.
James Richardson, sen. merchant, Glasgow.
William Clydesdale, cabinet-maker there.
John Tennant, brewer there.
George Bell, jun. manufacturer there.
George Stayley, manufacturer in Balmanno-street, Glasgow.
Robert M'Kinlay, print-cutter in Mr. Fulton's employment, near Paisley.
William Orr, jun. manufacturer in Paisley.
James Craig, manufacturer, Water Brae, Paisley.
James Gemmel, merchant, Storie-street, Paisley.
William Muir, Fisher-row, Paisley.
Hamilton Ballantyne, Storie-street, Paisley.
James Muir, weaver, Shuttle-street, Paisley.
John Buchanan, foreman at Kincaid print-field, in the parish of Campsie.
Robert Honarie, printer there.
Patrick Horn, printer there.
Smollet M'Lintock, block-cutter there.
William Henry, of Borrowstown parish, Baldernock.
James M'Gibbon, printer, at Kincaid print-field.
John Freeland, distiller in Kirkintilloch.
Andrew Rochead, younger, of Duntiblaemill, parish of Kirkintilloch.
Robert Boak, surgeon in Kirkintilloch.
John Edmond, print-cutter, Kincaird print-field.
Robert Millar, weaver in Cambauslang.
The Rev. Mr. William Dunn, minister of Kirkintilloch.
David Wallace, late servant to James Muir of Huntershill, now to James Stark of Adamslie.
Robert Scott, weaver in Kirkintilloch.
Archibald Binnie, type-founder, Edinburgh.
Charles Salter, brewer in Edinburgh.
Peter Wood, teacher in Portsburgh.
John Buchannan, baker in Canongate.

* See a note to the case of Joseph Gerrald in this Volume, *post*, containing an extract of a letter from the hon. Henry Erskine.

—— Bell, tobacconist, Canongate.
William Skirving, Edinburgh.
Maurice Thomson, starch-maker there.
Andrew Wilson, brewer in Portsburgh.
John Smith, weaver, Lothian Road.
Peter Hardie, brewer in Portsburgh.
Col. William Dalrymple, of Fordell.
William Johnston, esq. Edinburgh.
The Right Hon. Lord Daer.
—— Newton, residing St. Patrick's-square, Edinburgh.

Immediately afterwards the lord justice clerk asked Mr. Muir, if he had any thing farther to state, in support of these defences, as in the farther course of the trial he would be precluded from adducing any thing extraneous.

Mr. Muir then rose up and said. According to the rule of Court, I have the evening before this day communicated to the public prosecutor the substance of my defence in writing. The truth of every word in that defence I shall strongly prove before I leave this bar. I admit that I exerted every effort to procure a more equal representation of the people in the House of Commons. If that be a crime, I plead guilty to the charge. I acknowledge that I considered the cause of parliamentary reform to be essential to the salvation of my country; but I deny that I ever advised the people to attempt to accomplish that great object, by any means which the constitution did not sanction. I grant that I advised the people to read different publications upon both sides, which this great national question had excited, and I am not ashamed to assign my motives. I consider the ignorance of the people, on the one hand, to be the source from which despotism flows: I consider, upon the other hand, an ignorant people, impressed with a sense of grievances, and wishing to have these grievances redressed, to be exposed to certain misery and to complete ruin. Knowledge must always precede reformation, and who shall dare to say that the people should be debarred from information, where it concerns them so materially? I am accused of sedition; and yet, I can prove by thousands of witnesses, that I warned the people of the danger of that crime, exhorted them to adopt none but measures which were constitutional, and intreated them, to connect liberty with knowledge, and both with morality. This is what I can prove. If these are crimes I am guilty.

Their lordships then proceeded to give their opinion on the relevancy of the indictment.

Lord *Henderland*. My lord justice clerk; The crime with which the indictment charges the panel at the bar, is that of exciting discontent amongst the people; of endeavouring to create a rebellion; of feloniously disseminating wicked and seditious publications, and advising their perusal. It charges him likewise with recommending, printing and approving declarations calculated to produce riot and confusion; and particularly with attacking kingly government, a pillar on which the constitution hinges, and which if undermined or pulled down, must give rise to the most serious consequences. Had he observed the history of this country, he would have seen the pernicious consequences of the crimes laid to his charge; or had he observed the situation of a neighbouring country, he would have seen that similar crimes had like an earthquake swallowed up her best citizens, and endangered the lives and properties of all. Sorry shall I be, if of such a crime any man be found guilty. I hope the panel at the bar may be able to exculpate himself; but if the charges libelled are found to be true, they in my opinion must be found relevant, to infer the pains of law, and those pains include every thing short of a capital punishment.

Lord *Swinton* said, he never had heard such an indictment read, and he did not believe that in the memory of man, there ever had been a libel of a more dangerous tendency read in that Court. There was hardly a line of it which, in his opinion, did not amount to high treason; and which, if proven, must infer the highest punishment the law can inflict.

Lord *Dunsinnan* and lord *Abercromby* coincided in opinion with lord Henderland and lord Swinton as to the dangerous tendency of the crimes charged; and that if proven, the highest punishment should be inferred.

Lord Justice Clerk. The crime here charged, is sedition; and that crime is aggravated according to its tendency; the tendency here is plainly to overturn our present happy constitution—the happiest, the best, and the most noble constitution in the world, and I do not believe it possible to make a better;—and the books which this gentleman has circulated have a tendency to make the people believe that the government of this country is venal and corrupt, and thereby to excite rebellion. His lordship, therefore, agreed to find the libel relevant to infer the pains of law.

The Court then pronounced the following INTERLOCUTOR

"The lord justice clerk, and lords commissioners of justiciary, having considered the criminal libel, raised and pursued at the instance of Robert Dundas, esq. of Arniston, his majesty's advocate, for his majesty's interest, against the said Thomas Muir, panel, they find the libel relevant to infer the pains of law, but allow the panel to prove all facts and circumstances that may tend to exculpate him, or alleviate his guilt; and remit the panel, with the libel, as found relevant, to the knowledge of an assize."

The interlocutor having been pronounced, the clerk of court gave the lord justice clerk the following list of forty five jurymen.

Sir John Clerk, of Pennycuick, baronet.
Sir William Dick, of Prestonfield baronet.
Sir John Inglis, of Cramond, baronet.

Sir Archibald Hope, of Craighall baronet.
Sir James Fowlis, of Collington baronet.
Sir Philip Ainslie, of Comley-bank baronet.
Charles Watson, of Saughton.
James Forest, of Comiston.
Thomas Craig, of Riccarton,
Captain John Inglis, of Auchindinny.
John Wauchope, of Edmonstone.
John Balfour, younger, of Pilrig.
David Johnston, of Bavelaw.
John Davie, of Gaviside.
Andrew Wauchope, of Niddry Marishal.
John Trotter, of Mortonhall.
Gilbert Innes, of Stow.
John Davidson, of Ravelrigg.
James Rocheid, of Inverleith.
John Newton, of Curriehill.
James Calderwood Durham, of Polton.
Thomas Wright, of Greenhill.
James Gillespie, of Spyelaw.
Thomas Sivewright of South-house.
James Kerr, of Woodburn.
John Alves, of Dalkeith, portioner.
Patrick Pridie, hatter in Edinburgh.
Thomas Brown, bookseller there.
Andrew Smith, perfumer there.
James Charles, hosier there.
Alexander Inglis, merchant there.
William Pattison merchant there.
William Cooper, upholsterer there.
Andrew Ramsay, slater there.
Thomas Duncan, bookseller there.
William Dalrymple, merchant there.
Francis Buchan, merchant there.
James Mansfield banker there.
Donald Smith, banker there.
James Dickson, bookseller there.
Samuel Paterson, merchant there.
George Kinnear, banker there.
Andrew Forbes, merchant there.
John Horner, merchant there.
Alexander Wallace, banker there.

WILLIAM NAIRNE
ALEX. ABERCROMBY
JOHN SWINTON.

The *Lord Justice Clerk* proceeded to name the jury, and called Sir James Fowlis, of Collington bart, and captain John Inglis of Auchindinny.*

Captain *Inglis*, before being sworn mentioned that he was a servant of government; that he understood Mr. Muir was accused of a crime against government; and that he did not consider it as proper, that Mr. Muir should be tried by a jury composed of servants of government; that his mind felt scrupulous, laboured under much anxiety, and he begged leave to decline being a juryman.

Captain Inglis was informed by the Court, that there was no impropriety in his being a juryman, although belonging to the service of government.†

The *Lord Justice Clerk*, in the usual form, asked Mr. Muir if he had any objections to state to the first five gentlemen, whose names he had selected from the list of assize.

Mr. *Muir* said;—Of these gentlemen I have no personal knowledge. Their situations in life are respectable, and I believe them to be men of truth and of honour; yet my situation and theirs is so peculiar, that I am obliged to object to them being upon this jury. The question of parliamentary reform has agitated deeply, in proportion to its magnitude, the minds of men in this country; different opinions have been adopted, and different parties have been formed. These gentlemen belong to an association which assembled in Goldsmith's-hall, calling themselves the friends of the constitution, united to support it against republicans and levellers, and expressing their zeal to suppress tumult and sedition. I belong to the association of the Friends of the People. Viewing a reform in the representation of the people as a measure the most conducive to the stability of the constitution, and to the felicity of the people, we united our common exertions, by legal measures, to accomplish that object.

To the constitution, in its genuine principles, we have solemnly pledged ourselves.—Never have we professed to be its enemies, yet the association in Goldsmith's-hall, by a deliberate and public act of their's, have declared, that we were the enemies of the constitution. Equally zealous in our declarations to the world—in our reprobating riot and sedition, and sincere in our hearts, that association has denounced us to this country, as attempting to kindle the torch of civil war, and to lay it in blood and destruction. The fact upon which I found this charge is notorious, and cannot be denied. A convention of delegates, from all the societies of the Friends of the People, in Scotland, assembled in this city, upon the 11th day of December last. Of this convention I had the honour of being a member. The convention accorded with the association at Goldsmith's-hall, in their zeal to support the constitution, in their abhorrence of sedition, and in their determination to concur with good citizens in the suppression of riot and of tumult. To testify then to this association, their principles and their object, the convention ordered a number of its members to repair to their hall, and to subscribe the book which they had opened of adherence to the constitution. In this number I was included. We did so. And, what were the consequences? The association erazed our names, and published in the papers of the day their proceeding. Was not this an act of public proscription against us all? Accused this day of sedition, of an attempt to overthrow the constitution, shall those men be my jurymen, who have not merely accused me, but likewise judged and condemned me without knowing me, without leaving me the possibility of the power of vindication? This

* For the mode in which a Scots jury is appointed, see the note to the case of James Stewart, *anté*, Vol. 19, p. 11.

† As to this see Vol. 22, p. 1038.

trial is no trivial matter. It affects me, but it affects the country more. The noise of it will pass down to other times, and posterity may fancy their most valuable rights connected with its consequences.

A respectable gentleman of the five to whom I now object, has felt the delicacy of his situation, and has honourably avowed his scruples. Such sentiments, so respectful in themselves, I trust are common to all his colleagues.

This is not the only objection I state to the gentlemen of Goldsmith's-hall being of my jury. I am accused of circulating the works of Mr. Paine. That association has publicly advertised their horrors at the doctrines contained in these books. Nay, more, they have offered a reward of five guineas, to any one who will discover a person who may have circulated them! If this is not prejudicating my cause, I demand to know what prejudication is?

Upon these two objections, I shall make no farther observations. To suppose them not well founded, would be to insult the common sense and the common feelings of mankind.

I demand justice. Let me be tried fairly, not by a jury of the Association of Goldsmith's-hall, not by a jury of the Association of the Friends of the People, but by men unconnected with either, whose minds cannot possibly be supposed warped with prejudices. I therefore solemnly protest, that no person who is a member of the association in Goldsmith's-hall, should, or can be, of the jury in my trial.

The *Solicitor General* [*Blair*] replied, that he considered this objection to be of the most extraordinary nature. The panel is accused of forming associations contrary to the constitution, and he presumes to object to those gentlemen, who formed associations in its defence. With equal propriety might the panel object to their lordships on the bench, to be his judges in this trial: their lordships had sworn to defend the constitution.

Mr. *Muir*.—This day, I will not descend into the quibbles of a lawyer. I object to these gentlemen, not because they associated in defence of the constitution;—I too, as well as they, have associated in defence of the constitution;—but my objection is, that they, by an act of their's, have publicly accused me of being an enemy to the constitution, have already pronounced the sentence of condemnation, and have imposed upon my name the seal of proscription.

Lord Justice Clerk.—If the objections of the panel were relevant, it would extend far indeed; it would go to every person who had taken the oaths to government. I can see nothing in the objection, and I am clear for repelling it.

Lord *Henderland*.—I can see nothing in the objection; these gentlemen entered into a society for a particular purpose, and had the right of judging of the qualification of their members; they did not think Mr. Muir or his friends proper members. In no trial whatever could this be a good objection.

The Court repelled the objection.

Mr. Muir, however, made the same objection to the next five that were selected, and again to the last five.

When the list of the five last was presented, he said it was not sufficient to say that these gentlemen were free to form a society; this is a fact which no man in his sound senses will dispute. But this society, when formed, had opened, in a public place, a book for public subscription. By repeated advertisements they had called upon every friend to the constitution, every enemy to sedition and tumult, every person inimical to a public division of property by a levelling system, to come and subscribe their names in that book, as expressive of their attachment to the constitution, to property, and to peace. Every porter, every chairman from the streets, was allowed to insert his subscription. Why were the names of the panel and his friends expunged? Was it not a public denunciation of their being the supporters of that system of plunder and of disorder, which that association was to oppose?

Their lordships were unanimous in repelling the objection, and the jury was impanelled consisting of

Sir James Foulis, of Collington.
Captain John Inglis, of Auchindinny.
John Wauchope, of Edmonston.
John Balfour, younger, of Pilrig.
Andrew Wauchope, of Niddry-Marischall.
John Trotter, of Morton-Hall.
Gilbert Innes, of Stow.
James Rochead, of Inverleith.
John Alves, of Dalkieth, portioner.
William Dalrymple, merchant, Edin.
Donald Smith, banker, Edin.
James Dickson, bookseller, Edin.
George Kinnear, banker, Edin.
Andrew Forbes, merchant, Edin.
John Horner, merchant, Edin.

When the jury were sworn in, Mr. Muir again stated, that he believed them to be men of truth and integrity, but never would cease recalling to their attention the peculiarity of their situation. They had already determined his fate. They had already judged his cause; and as they valued their reputation, their own internal peace, he entreated ——— Here Mr. Muir was interrupted by the Court, who concurred in opinion that his conduct was exceedingly improper, in taking up their time, as the objection had been repelled.

The lord advocate then proceeded to call the witnesses.

Alexander Johnston.

Mr. *Muir* objected to this witness. He said he did not know him. He did not remember if ever he had seen him, but he could clearly prove, by respectable witnesses, that

this person had said, upon hearing of his arrival in Scotland, that he would do every thing in his power to have him hanged.

Mr. Muir was asked if he could condescend upon any particular circumstances of malice, which this witness entertained against him. He replied, that he did not know him, therefore could specify no circumstances from which the proposed witness might have entertained malice against him; but the fact that he had so expressed himself was certain and true, and if permitted, he would immediately substantiate what he had asserted by the most convincing proof.

The Court observed, that witnesses might be averse to bear testimony. That for this purpose they might make similar assertions in order to disqualify themselves. That if, upon objections of this kind, they were to be cast, the ends of public justice might be defeated; besides, it was observed, that the witness would be purged of malice upon oath.

The objection was unanimously over-ruled, and the witnesses were adduced.

Alexander Johnston

Depones, that he was present at a meeting in Kirkintilloch, some time in the month of November last, but does not remember the day. That the meeting had then no name, but has been since known by the name of a Reform Society.

[The lord justice clerk here reminded the witness that he was to tell the whole truth; that though such a meeting might be illegal, nothing could be laid to his charge now he was a witness: and the only harm he could do himself was by perjury.—Mr. Muir having here observed that his lordship insinuated that these meetings were illegal, was desired by his lordship to sit down. The witness proceeded.]

Mr. Muir was present, who harangued the meeting. As far as he recollects, Mr. Muir addressed the president; stated the disadvantages in the representation, some boroughs being rotten, others having no vote. He stated the population of England and Scotland, and mentioned, that from the smallness of the number who voted, the people were not fully represented. Mr. Muir said, that if a man paid 20,000*l.* for a seat in parliament, he behoved to derive some interest from his seat, and he referred to the people whether it was reasonable that a man should pay so much for a seat in parliament without deriving some emolument in return. That the duke of Richmond had complained of this, but that 30,000*l.* had been put into his pocket to silence him.—That Mr. Muir compared our constitution with the French, and said, that beyond a doubt they would be successful. That they were more equally represented, and their taxes much less. That two-thirds of the French national debt was already paid. That a manufacturer in this country could not bring his goods to market with the same advantage as the French manufacturers; of course, we should lose our trade. Mr. Muir said, the society ought to be acquainted with the principles of those members they admitted. That the sole intention of these societies was, to procure a more equal representation of the people, and a shorter duration of parliament. That the means these societies were to use, for these ends, was, to petition parliament, and to communicate their resolutions, and extend their knowledge, by publishing and circulating useful publications. That in order to obtain that knowledge, they ought to get all political pamphlets from a neighbouring bookseller; but he did not mention any pamphlet in particular.

Being interrogated by the solicitor-general if there was any thing said about the royal family, he answered, that there was nothing said on that subject, except that they were to hold it legal to have a king; but there was nothing said about the powers of the king, nor the expenses which his government might incur. That a person present inquired into the principles of the society, and one near him said, that for his part he had no need of any explanations; for he had read "Paine's Rights of Man." Being questioned as to the circumstances in which Paine's book was mentioned, he said, it was spoken by one neighbour to another, and he did not know that Mr. Muir heard the conversation. The most of the members were young weavers, from eighteen to twenty years of age. He knew of no previous meeting at Kirkintilloch, this one being the constituting one. Mr. Muir did not come into the meeting till after it was constituted, but had promised in the morning to be there. He seemed to be the principal man in that society, and said, he belonged to other societies of the same sort; he recommended to the people who intended to form themselves into societies to do so soon, that they might be able to communicate their sentiments to one another, and lay their petition before parliament.

Being cross-examined by Mr. Muir, he deponed, That Mr. Muir did recommend order and regularity to the meeting, and observed that any tumult or disorder would ruin their common cause. He told the meeting, that there was no other mode of procuring redress, but by applying to parliament; and he recommended to the meeting to be careful of what members they received, and to admit no immoral characters. He likewise recommended reading political pamphlets in general.

Robert Weddell

Depones, That he remembers a meeting in Kirkintilloch, about the beginning of November last, which was called the meeting of the Friends of the People, or for a Parliamentary Reform. That Mr. Muir was at this meeting,

which was the constituting meeting—came in after the meeting began, and made a speech, in which he advised regularity in their proceedings; and mentioned that they ought to proceed, in a constitutional manner, as the law now is, by king, lords, and commons. He said nothing about the expence of a king, nor the burthen of taxes, nor the comparative expense of the French government, nor did he mention the success of their arms. He spoke about ten minutes. After the meeting broke up, the witness met Mr. Muir, with some others, in Mr. Wallace's, baker in Kirkintilloch, where the conversation was about the politics of the country—there were about eight present in Mr. Wallace's, not one-fourth of the number that was at the meeting. The witness was vice-president of the meeting, Mr. Freeland was president, and James Baird was secretary; there were no other officers, and all these were with Mr. Muir in Wallace's. He does not remember the particulars of the conversation, but Flower on the French Constitution was mentioned, which he never before had heard of. He thinks it was Mr. Muir that mentioned this book, in speaking of new publications, and he remembers books being spoken of. Depones, That at the meeting, one Boyd asked Mr. Muir's opinion about Paine's Works, when Mr. Muir said, that it was foreign to their purpose. He remembers this, because he was angry at the question being asked.

The Lord Advocate asked the witness, Whether Flower's book had been recommended?

Mr. Muir objected to the question. The witness was removed.

Mr. *Muir*.—There is no accusation brought against this book in the libel. Let it be admitted that this book is of a seditious or a treasonable nature, yet, as I am not accused of either recommending or circulating it, how can any thing under this indictment, concerning it, be adduced in evidence against me? I plead upon a great principle of natural justice: I look forward to other times, and I tremble for the precedent. If this were not the case, I would not say that I merely approved of that book of Mr. Flower's; but, in this great audience, I would recommend its principles, in general, to every man who valued the interests of his country, and whose feelings interest him in the happiness of human kind.

Lord Advocate.—The charge against the panel is sedition and it is branched out under various heads. One of these was, advising people to purchase seditious books; and he was entitled to examine as to such facts, though every particular book or fact was not condescended on in the libel.

Mr. *Muir*.—Neither in justice nor in law has the public prosecutor a right to bring against me a general charge. Every criminal charge upon the facts must be special, in order that the panel may know the crime that is alleged against him, and accordingly prepare the special matter of his defence. Would it be fair in the Lord Advocate, if he (Mr. Muir) had been tried for robbery, to bring a proof that he was guilty of murder? he could have proved that Mr. Flower's book is no libel, or he might have brought evidence to prove that he never recommended or circulated it, but here an unfair advantage was taken of him; it was a secret trap, an engine laid to ensnare him.

Lord Justice Clerk.—By the statute of James 6th, wherever art and part is libelled, there can be no objection to the generality. This is a proper question; it has a tendency to establish the major proposition, and it ought to be sustained.

Their Lordships were going to give their opinions on this point, when the Lord Advocate gave up the question.

The witness was again called in, and deponed, That there was something mentioned at the meeting about purchasing books, and Henry's History of England was mentioned. Being interrogated as to what books were purchased in consequence of this conversation, Mr. Muir objected to this question upon the same grounds as before; but the objection was repelled by the Court.

The witness was then again interrogated what were the books he had purchased or any other person he knew; deponed, That he had purchased two or three copies of the Political Progress of Great Britain, and three or four copies of the Paisley Declaration of Rights. That these purchases were not made for the Society, nor in consequence of the conversation which took place at the meeting, but merely for his own amusement. That he kept one of the copies for his own use, and he got his own money for the other three copies of it. That a copy was laid upon the table before the meeting was gathered. He knew of no copies of Paine being circulated; he had read it, but did not recollect from whom he had received it; he never saw the Dialogues between the Governors and the Governed, but had seen one number of the Patriot, which was shown to him by William Muir.

Upon being cross-examined by the panel, depones, That Henry's History of England was spoken of by Mr. Muir. That Mr. Muir did not advise the people to riot, but that he advised them to constitutional measures, and said the more constitutional the more successful they would be.

Being interrogated by the solicitor-general concerning the object of the Society, and what he meant by a reform in parliament, was every man to have a vote? he hesitated and said there were different opinions, but that in general it meant a more equal representation of the people.—But what did he mean by a more equal representation of the people? Who were to have votes? As the witness did not readily reply to this question, the solicitor-general took occasion to observe, that he wondered what Mr. Muir intended to make

of the people; and that if all the members of the society were as ignorant as this vice president, they must know nothing about the matter. Then the witness stated, that there were two opinions in the society, one party was for having the rights of voting confined to landed property, the other was for every man having a vote.—Which party was he of? He had not fully made up his mind upon the question. Did Mr. Muir give his opinion upon the point? He did not.

Upon Mr. Muir's interrogatory, depones, That Mr. Muir recommended to avoid riot, and said, that tumult would ruin the cause; he also advised them to take care of the moral character of the members whom they admitted. He does not remember whether Mr. Muir said he would desert them if they became unconstitutional, and he does not remember that he recommended them to purchase any other book than Henry's History of England.

Rev. Mr. *James Lapslie.*

The public prosecutor next adduced as a witness Mr. Lapslie—

Mr. *Muir.*—Let this witness be removed, I have many objections to state against him.

Mr. Lapslie was accordingly removed.

Mr. *Muir.*—I have said that I have many objections to state, both to the admissibility and credibility of this witness. My delicacy, with regard to that man, will at present permit me to adduce the least weighty only; for I mean to prove the most important, in a different shape, in a criminal prosecution against him, when he and I shall exchange places at this bar. I know not what title this reverend gentleman has to act as an agent for the Crown; but this I offer to prove, that he assisted the messengers of the law in exploring and citing witnesses against me; that he attended the sheriffs in their different visits to the parishes of Campsie and Kirkintilloch; that, previously to the precognition,* he conversed with the witnesses of the Crown; that he attended their precognition, put questions to them, and took down notes; nay more, that, without being cited by the prosecutor, he offered himself ultroneously against me, and insisted that his declaration should be taken in the unusual form, with his oath attending it, to attest its truth. Upon other matters I shall not dwell; it is sufficient for me to say, that this witness attended the precognition of other witnesses. The uniform and the late decisions of your lordships have sustained this objection—the witness therefore cannot be examined.

The *Lord Advocate* said, that Mr. Muir's objection was twofold:—that he accused Mr. Lapslie of being present at precognitions taken before the sheriff; and also of being an agent in the cause, that the former contained a question of importance, which he would not then agitate except it were necessary; and requested that Mr. Muir might first have his proof confined to the establishing the agency of the witnesses.

The *Lord Justice Clerk* acceding to this, in proof of the objection, Mr. Muir called

Henry Freeland,

Depones, That he knows Mr. Honeyman (sheriff of Lanarkshire) and saw him at Kirkintilloch, in company with Mr. Lapslie and another gentleman a writer in Glasgow. Mr. Honeyman examined the witness about Mr. Muir; and, during the precognition, Mr. Lapslie also put questions to the witness. He asked him if he had got a college education, which being answered in the negative, Mr. Lapslie said he was a clever fellow, and when he saw him write, he said it was a pity such a clever fellow should be a weaver, and that it was in Mr. Honeywood's power to procure him a birth, which was said in presence of Mr. Honeyman. That when Mr. Honeyman examined him about how often Mr. Muir had been at Kirkintilloch meetings, Mr. Lapslie also asked him if Mr. Muir had been more than once there. That on the above occasion, when Mr. Lapslie praised the witnesses's abilities, the witness answered, that it was flattery, when Mr. Lapslie clapped him on the shoulder and said, it was no such thing, but that it was probable Mr. Honeyman would see him again.

Mr. Muir then called

Robert Henry,

Who deponed That he was examined by Mr. Honeyman about Mr. Muir, that Mr. Lapslie was present all the time he was so examined; but asked no questions.

The *Lord Justice Clerk* here reminded Mr. Muir that he should confine himself to the question of agency.

Mr. *Muir* replied, that he conceived that if he would bring forward a string of witnesses, at the taking of all of whose precognitions Mr. Lapslie was present and more or less active, that that tended in the most effectual manner to establish the point of agency. He then called

Robert M'Kinley,

Who deponed, That he was examined at Campsie by Mr. Honeyman, in presence of Mr. Lapslie and Mr. Shields. Mr. Lapslie spoke to the witness before the examination, and told him to speak the whole truth, and frequently exhorted him, during the examination to tell every thing as it concerned Mr. Muir and not him the witness.

Mr. Muir proceeded to call James M'Gibbon, when the lord advocate gave up Mr. Lapslie's evidence; consequently there no longer remained any necessity to examine more witnesses with regard to the conduct of that gentleman.

* As to the taking precognitions, see the note to the case of Spreull and Ferguson, *ante* Vol. 10, p. 782.

The *Lord Advocate* said, that he gave up Mr. Lapslie as a witness, not on the ground of his being present at the precognitions, but because he appeared, if not an agent, at least to have taken too active a part in the business; reserving to himself, however the power of taking the opinion of the court upon the former point at another opportunity.

The evidence for the Crown then proceeded.

Henry Freeland.

When this witness appeared, Mr. Muir observed, that the jury would remember, that from what this witness had already deponed, it would appear that he had got the promise of a good deed.

Then the witness being examined, depones, That he was present at a meeting in Kirkintilloch, which was called a society for reform, on the third of November last. He was president that night and sat in the chair. Mr. Muir was there and made a speech of about a quarter of an hour. The general purport of the speech was about shortening the duration of parliament, and a more equal representation. He thought the taxes might be lessened by these means. That the reform was not to affect the King and House of Lords, but only the Commons. He mentioned the success of the French arms, and that liberty would be established in France; but witness did not understand that there was any comparison between the government of France and this country. He spoke of books in general, but he does not recollect the name of any being mentioned but Henry's history of England; it was political books in general. The books this witness remembers to have seen, are the proceedings of the Westminster Association, the Patriot, and Paisley Declaration. He deponed that Mr. Muir had sent for him to the house of Mr. Wallace, innkeeper in Kirkintilloch, that Paine's book was mentioned by Robert Boyd, and Mr. Muir said it was foreign to their purpose. The witness likewise deponed, that when he was sent for by Mr. Muir, he said, that he had heard of a society for reform being formed at Kirkintilloch, and that he was concerned in other societies, and wished to talk to him about it; the witness had never seen Mr. Muir before; and, after some conversation, he asked Mr. Muir if ever he had read Paine's book, and what he thought of it, Mr. Muir said, that it had rather a tendency to mislead weak minds, the witness said he wished to see it, Mr. Muir told him, that it was in his great coat pocket, which was lying on a chair in the room; the deponent then took the book out of the great coat pocket; he was surprised that Mr. Muir did not recommend it to him because every body else spoke well of it, and was surprised that Mr. Muir said it had a bad tendency. The witness said to Mr. Muir that he believed that the King's proclamation was directed against Mr. Paine's book, and Mr. Muir agreed that it was the general opinion. That the witness took the said book home and read it; that he also gave it to others to read, viz. to John Scott, wright, and John Stewart, cooper, member of the society, who was angry that it was given to Scott before him, because he wanted to read it first.

The witness also depones, that the Paisley Declaration was not mentioned at this meeting, but that he had afterwards written a letter to Mr. Muir, informing him that the books which were in circulation gave great satisfaction. The Paisley declaration was then in circulation.

The reason of the deponent's writing to Mr. Muir, was, to get his opinion, on the case of a newspaper, addressed to the witness, which had been sent by the postmaster of Kirkintilloch, to Mr. Grey, a justice of the peace, and inquiring whether it would be proper to prosecute the postmaster and the justice of peace, and the circulation of the books was only mentioned in the postcript, after having stated the case.

The deponent received two letters from Mr. Muir, neither of which took any notice of the circulation of the books. In the second letter, Mr. Muir said, that a convention of delegates of the Friends of the People, was to be held soon in Edinburgh, and he hoped to see him there. The witness never purchased the Paisley Declaration: copies of it were purchased for the society. It was mentioned at different meetings as published, and it was thought proper to purchase some for the society. The copy of Paine's Works produced in court was indentified by the witness to be the book which he took out of Mr. Muir's coat pocket. When he took the book, the leaves were not cut open. The witness added again that he mentioned the book first to Mr. Muir. That William Muir was present when the book was taken, and the witness believed that the reason Mr. Muir sent for him to Wallace's might be, because he was a distant relation.

When cross-examined by Mr. Muir, the witness deponed, That he had a conversation about forming a reform society before he saw Mr. Muir. That Wallace, the keeper of the public house in which the meeting took place was an old servant of Mr. Muir's father, and Kirkintilloch is within four miles of Huntershill, his father's house. That Mr. Muir recommended no particular book, except Henry's History of England: but that he recommended reading political books in general. That he cautioned them to be careful that they admitted none but persons of good moral character into their society—advised them to follow none but legal and constitutional measures, and said, mobs would ruin their cause; that Paine's book was foreign to their purpose; that there was no way of obtaining a reform but by petitioning parliament. When asked by Mr. Muir—why were you so desirous to see Paine's book,—he answered—because I was informed that the king's proclamation

was directed against it, and I was curious to see a book that was so much spoken of.

[About this time Mr. Wylde, advocate, who was sitting at the clerks table, handed a note to Mr. Muir; upon which, Mr. Muir requested that he should be inclosed as an exculpatory evidence. Mr. Wylde, after having retired for a few minutes, returned, and pointed out something in the note which Mr. Muir had not observed. Upon which Mr. Muir began to apologize for what had happened, which was owing to a part of the note having escaped his observation. But he was interrupted by the Court, and told that he was not in a place for making apologies; then Mr. Wylde rose, and in a most candid and manly manner, stated, that the note he had given to Mr. Muir was simply mentioning, that a similar requisition was made to him, and he would have lent Paine's book if he had had it in his possession.]

William Muir.

When the oath was proposed to be administered to this witness, he refused to swear, as being contrary to his religious principles, being asked what these principles were, he declared he was one of those, who are called the mountain*: That he had no objection to be examined; that he would tell the whole truth, but could not wrong his own conscience by taking an oath, which he thought unlawful.

The Court observed to him, that if he would not swear, no other alternative remained to them but to commit him to prison; that there was no way by which he could ever obtain his liberation, and that his imprisonment would be perpetual. He replied, that he could not help it, and that he knew the Lord was present in prison as well as any where else.

The judges asked him, if he believed in the Bible; to which he answered he did. He was then interrogated, if he could point out any particular passage which taught him the unlawfulness of taking an oath. In order to remove his scruples they quoted several passages from the Bible, but he still adhered to his first declaration, saying, that he could not take the oath without deserting his principles, which he was determined never to do.

The *Lord Advocate* moved, that this person should be committed to prison for his contumacy, informed him there was no way by which he could ever be set free, and in express words declared, that his imprisonment would be eternal.

Mr. *Muir*.—I believe this person to be a good and conscientious man. Whether he be right or wrong in refusing to take this oath, is not an object of my inquiry. He is adduced as a witness by the prosecutor against me. I have therefore the most material interest that he should be sworn, but rather than he should suffer for acting according to the dictates of his conscience, I wave my right, and I will admit every word which he utters, although not upon oath, to be as true as if it were.

The Court observed, that neither they nor the jury could listen to any evidence but what was given upon oath. The law expressly required it, and it could not be dispensed with, and that the prosecutor and public justice were concerned in this matter also.

William Muir persisted in his refusal. The Court committed him to prison, declaring, they knew no mode by which, by the law of Scotland, he could be liberated.

By the officers of the court he was conducted to prison.*

John Brown

Depones, That he was present at a meeting in Milltoun of Campsie, about the month of October or November last, and recollects that Mr. Muir was present at the meeting, and that he spoke there: that he was not at the Kirkintilloch meeting, though he had heard of it: that the Campsie meeting was after the Kirkintilloch meeting: that it was some lads of the place and people of the neighbourhood who called the meeting at Milltoun: that he does not understand these meetings were called by Mr. Muir. He saw no books at the meeting. He had seen Paine's book, but not at the meeting; he had bought it. The deponent was not positive that the book was not spoken of at the meeting; it might have been mentioned, but he does not remember it. The purport of Mr. Muir's speech was, recommending good morals and constitutional measures. He does not remember at what time he bought Paine's book, nor whether it was before or after the meeting: that he bought it at Glasgow, having seen it accidentally in the window of a shop. Being further interrogated as to what he had heard Mr. Muir say? Depones, that he recommended sobriety, morality, and every good and constitutional book; that there were some things in Paine which would hardly do, and which were not constitutional. There was no mention made of France, nor of the French constitution. The witness had read a small part of the Political Progress.

Anne Fisher

Depones, That she was some time servant to Mr. Muir's father; she knows, about the

* A religious sect commonly known by the name of the Cameronians, descended from the Covenanters in the reign of Charles 2. *Orig. Edit.* as to the Cameronians see the notes in Vol. 10, pp. 849, 865 and Vol. 11, p. 949 of this Collection.

* See Bingley's case upon a commitment by attachment for a contempt in refusing to answer interrogatories, cited in the case of Benjamin Flower, A. D. 1799, *post*.

time libelled, Mr. Muir was much busied about reading and writing, but does not know the subject: that she was sent to Mr. Mennons', printer in Glasgow, with a message from Mr. Muir, and with a paper, which she thinks was intituled, "A Declaration of Rights," which had not been printed as he wanted, to get it corrected. She saw at that time, a good many country people coming about Mr. Muir's father's shop: that Mr. Muir has frequently said to these country people, that Mr. Paine's Rights of Man was a very good book: that she has frequently bought this book for people in the shop, and that this was sometimes at the desire of Mr. Muir, and sometimes at that of these people. She bought both the First and Second Part of Paine, at different times, and when she returned with them, she sometimes laid them on the table, and sometimes gave them to the people; that she bought two different parts at different times, for Alexander Muir, Mr. Muir's uncle: that she was sent for a copy by Mr. John Muir, hatter, but is not sure whether or not she got it: that John Muir was much pressed upon by the panel to purchase the book: that she bought the book at Brash and Reid's: that, to the best of her remembrance, she bought one for one Barclay, a weaver, from the parish of Calder: that she knows Mr. Muir's hair-dresser, Thomas Wilson, and she has heard Mr. Muir advising him to buy Paine's Rights of Man, and to keep them in his shop to enlighten the people, as it confuted Mr. Burke entirely, and that a barber's shop was a good place for reading in; that she herself read Paine's Rights of Man, as she was curious to see what was in it: that the copy she read belonged to Mr. Muir's servant: that she has seen several copies of the book, one in writing paper with Paine's head, and several in coarse paper, that she had seen Flower on the French Constitution, that she has also seen the Declaration of Rights in Mr. Muir's room, and in the dining room; and also the Dialogue betwixt the Governors and the Governed, which she has heard him read to his mother, sister, and others, but does not know any other persons who were present; and that this was in the shop. That Mr. Muir said it was very clever, and written by one Volney, one of the first wits in France: that she cannot recollect any of the persons present: that she does not remember to have seen the Patriot: that she thinks she has heard part of the Paisley Declaration read by Mr. Muir in the said back shop, in presence of somebody, that being the common place where he read these books: that she has been sent from the back shop upstairs for loose copies of Paine's Rights of Man, but does not know how many: that Mr. Muir's conversation was commonly on political subjects; and that he frequently read French law books: that she recollected hearing a conversation wherein Mr. Muir said, that if every body had a vote he would be member of parliament for Calder: that members of parliament would then have thirty or forty shillings a day, and that none but honest men would be members of parliament, who would keep the constitution clean from encroachments; and that they would give new councillors to the king, such as would govern the nation with justice: that she has heard it said by Mr. Muir, that France was the most flourishing nation in the world, as they had abolished tyranny and got a free government: that she heard him say, the constitution of this country was very good, but that many abuses had crept in, which required a thorough reform: that the court of justiciary would need a thorough reform too, for it was nonsense to see the parade with which the circuit lords came into Glasgow: that they got their money for nothing but pronouncing sentence of death upon poor creatures: that this conversation took place about the time of the last harvest circuit: that she remembered about that time Mr. Muir was counsel for two soldiers at Glasgow; and that in conversation afterwards upon that subject, she heard him say, that he had then told the judges and the jury what they had to expect.

Mr. *Muir* arose; and upon his motion, the witness was removed.

Mr. *Muir* then said, that the conduct of the lord advocate was in every respect highly reprehensible. He has put a variety of questions to witnesses, with regard to crimes of which I am not accused. The indictment charges me with making seditious speeches at Kirkintilloch and at Campsie, vilifying the constitution and the king, and inflaming the minds of the people to rebellion. It charges me with distributing seditious books; and it specifies, that I gave away Mr. Paine's Works, some numbers of the Patriot, the Dialogue by Volney betwixt the Governors and the Governed, the Paisley Declaration of Rights, and of having read, in the Convention, the address from the Society of United Irishmen in Dublin. The indictment charges nothing more, there is not a single letter within its four corners which points out to me the charge of speaking disrespectfully of courts of justice, tending, in any manner, to excite the people against the administration of the law. Compared to a crime of this nature, the giving away to single individuals, single copies of books and pamphlets, which may be esteemed seditious, is a 'trifle light as air.' If the public prosecutor had evidence that I was guilty of this crime, he was deficient in his duty to the public, in not making it an article of accusation. He should have manfully, in the light, brought it forward against me, joined a fair issue betwixt us, and then I would have defended myself in the best way I could. But to attempt to steal it in as evidence in this way, to prove a crime which he durst not openly libel, because he knew it could not be supported, merits the severest reprobation. But what is the tendency of this little art? this

domestic and well-tutored spy is brought to prove words which may irritate your minds against me,—Yes, this is the artifice, this is its object, but your justice will render it ineffectual. You will feel the same contempt which I do.

Let us pass from that—I contend upon the great principle of natural justice, upon the constitutional law of this country, that no person can be tried for a crime of which he has not been previously accused. What is the purpose of an indictment, but to specify the crimes which are to be proved, in order that the panel may have an opportunity to prepare his defence? Why is the indictment served upon him fifteen days before the trial, but to enable him to accomplish this purpose? It is vain to say that under the general charge of sedition, every thing tending to prove it can be adduced, although not specially mentioned. If this is now to be adopted as law, what portion remains to us of our national liberties is for ever torn away. Every thing is insecure, an indictment will no longer be regarded but as a piece of unmeaning paper. The unfortunate man who receives it may say, I am charged with robbery. I have many witnesses to prove I did not perpetrate this crime, but what avails preparing a defence? Not a single witness may, perhaps, be adduced against me for that offence. I may never hear a word of it in court, but I may be instantly called upon to defend myself against a charge of murder, of sedition, or of high treason. In short, if under the specious pretence of being allowed to introduce what is not specified in the libel to support its generality, you establish a precedent of this kind, you strike the fatal blow against individual security, and of general safety: what has been called the criminal law of this country, its forms, its precedents, and its principles, are for ever gone. It is vain to say, that the statute of James 6th, allows this proceeding; that statute is now obsolete. By the law of Scotland it has gone into desuetude. It was enacted under a despotic reign, when the freedom of Scotland was trampled under the foot of power. It opposes every principle of justice; and will you, after the lapse of so many years, descend into the grave, drag up the pestilential carcase, in order that it may poison the political atmosphere?—One word more upon the subject: the charge against me is sedition. That crime, from its very nature, supposes, and, in fact, it has often happened, that it may be attended by rapine and by murder. If, therefore, under the generality, you allow a charge of vilifying the courts of justice, which I never heard of before, you must, by the same parity of reasoning, allow a charge of plunder, equally unheard of, to be adduced as an aggravation of the general crime of sedition.

This question is of little importance to the individual, who is now struggling for the liberties of his country. But the eyes of your children will be fixed upon this trial, and they will tremble and shudder at the precedent. I feel for the country,—I feel for posterity,—I will not sanction the procedure which is to produce to both, a system of injustice, of ruin, and of murder.

The *Lord Advocate* said:—Mr. Muir is indicted for the crime of sedition, and that crime may consist of many facts and circumstances, and of these the strongest must be, feloniously and seditiously stirring up the inhabitants against a lawful king and a good constitution: that, to prove this, he was entitled to bring in evidence every word or expression which he held in his own family, and every conversation with ignorant country people, and upon that ground he was entitled to prove the facts by every witness that can be brought against him: that no person could deny the relevancy of the fact, viz. the abusing and vilifying the courts of justice to be an aggravation of the crime of sedition; it is that crime of which the panel is accused, and he certainly would be permitted to bring forward every thing which could support the charge. If it had been necessary to specify in the indictment all the facts against the panel, that indictment would have covered as much paper as would encircle this court.

Mr. *Muir*.—This is not the time to entertain your lordships with frothy declamation, with sounding but unmeaning periods. I pleaded upon just principles; every person here must see their strength, and must admit their truth.—If these are given up, if these are violated, property and liberty and life are insecure. Once more can the lord advocate himself say, that if he were to bring the general charge of murder against me, and should specify that I had murdered James, would he be allowed to prove, under the generality, that I had murdered John? Can there be any thing more plain, more just, and which requires less argument than the simple proposition which I support? That if you accuse a man of a crime, you must tell him what that crime is, in order that he may be able to defend himself against the accusation. Particular acts must be specified, in order that the panel may be able to prove, that either these acts in themselves were innocent, or that he was not accessary to them. If you destroy this proposition, if you sanction the reverse, what remains to this country, but the melancholy prospect of ruin and of despair?

Their lordships gave their opinions, as follows:

Lord *Swinton* said, that it was the general proposition of the libel, that the panel went about sowing sedition, and as the courts of justice were parts of the constitution, he was of opinion, that reflecting on them, was included in the general charge.

Lord *Dunsinnan* concurred with lord Swinton, and declared, that every particular circumstance which may come out in evidence need not be specified.

Lord *Abercromby* said, there was no neces-

sity for specifying in the libel every particular seditious expression that might have been used.

Lord Justice Clerk was clearly of opinion, that when one crime is charged, another, and a different one, cannot be proved under that libel. This none could dispute. But was that the case here? The panel is accused of sedition; and will any person say, that it is not a circumstance of sedition for the panel to have inflamed the minds of the people against courts of justice, so important, and so material a branch of the constitution? Under the statute of king James, wherever art and part is libelled, the prosecutor can prove every fact and circumstance, and no objection of generality is admitted.

The objection was over-ruled.

The witness was called back, who deponed, that she had heard Mr. Muir say, that he was for a monarchy under proper restrictions, and a parliament that knew what they were about: that a republican form of government was the best, but that the monarchy had been so long established in this country, that it would be improper to alter it. She also deponed, that she has been sent by Mr. Muir to an organist in the streets of Glasgow, and desired him to play *ça ira*.

Mr. Muir was asked, if he had any questions to put to this witness. He replied, I disdain to put a question to a witness of this description.

The witness, on her part, asked of the Court, if she might put a question to Mr. Muir?

The *Lord Justice Clerk* said, he would not permit it, but that Mr. Muir's expression was very improper, and added that he had never heard a more distinct and accurate evidence in his life.

Lord *Henderland* observed, that had Mr. Muir not been standing at the bar as a panel, he would have ordered him to prison for the expression.

As the witness was withdrawing, a juryman (captain Inglis) called her back, and asked her, if she had had any quarrel in Mr. Muir's father's family at parting? to which she replied, that so far from that, her mistress had given her 5*s*. more than her wages, and that miss Muir had given her a petticoat, with some other presents.

Thomas Wilson

Depones, that the witness was in use to dress Mr. Muir, and dressed him in the months of August and September last: that Mr. Muir having asked the witness if he had bought Paine's Works; on being told that he had not, he advised him to get a copy, as a barber's shop was a good place to read, but he did not press him to buy it: that the witness did not purchase a copy of Paine's Works, but that he bought the Address to the Addressers, and had it a day or two in his shop, but took it away when it began to be called down: that he remembers one day an old man coming into Mr. Muir's room, while he was dressing him, and that Mr. Muir said to the witness, in a laughing style, 'this is a keen reformer,' or 'a great re-'former.' That the witness recollects nothing farther of the conversation: that he could not recollect the man who was present, nor if any thing was said about Paine's Works, or whether it was a good book or a bad book, and never recollects of its being mentioned upon any other occasion.

Upon being interrogated by Mr. Muir, depones, that he has heard Mr. Muir say, that he would maintain the constitution: that he wished for peace and good order, and good morals among the people; and that he never heard him say any thing against the king: that he has seen Mr. Muir's library in the country, which is a large room not locked, but open to all the family.

The *Lord Advocate* stated to the Court, that he was informed that William Muir, the person committed to prison, was a parishioner of the Rev. Mr. Dunn's, minister of Kirkintilloch, one of the witnesses inclosed against the panel. That if Mr. Dunn was allowed to converse with him he might remove his error, and preserve him from suffering the dreadful punishment due to his obstinacy. He therefore moved their lordships to allow Mr. Dunn to converse with William Muir for the purpose.

Mr. *Muir* opposed the motion.—He said, he had already consented, and would still consent to admit the declaration of William Muir against him to be true, although not accompanied by an oath. To prevent the witness from suffering any punishment, he would surrender the right which the law gave him; but, that he certainly would object to conversation betwixt that witness and Mr. Dunn: not that he suspected any thing improper to take place in that conversation, but that this was a great and important cause; a trial that might create precedents dangerous to those who might come after. By the law of Scotland all witnesses must be examined apart from each other.* The law is jealous of their conversation: The law dreads their collusion, in framing together a consistent story. If, in this case, you allow Mr. Dunn and the witness, of both of whom I have no suspicion, to converse together, you cannot refuse it to others. It will be sufficient for two witnesses, who may have an interest in a trial, to play the same concerted game, in order to tell the same concerted story with more accuracy and with greater safety.

The *Lord Advocate* declared, that he would depart from Mr. Dunn as a witness, and that the conversation should proceed in the presence of an officer of the court, or of some person on the part of Mr. Muir.

Mr. *Dunn* being called in, stated, that he

* As to removing witnesses while others give their testimony, see the notes *antè* Vol. 13, p. 348, and Vol. 19, p. 330.

could not promise to remove the man's scruples, but that he would endeavour to do so. He was then sent to converse with the prisoner in the robing room in presence of one of the macers; but was ordered to confine himself solely to the removing of his scruples, and not to say any thing on the subject of the trial.

John Muir

Deponed, that he is acquainted with the panel: that he was at his father's house in Glasgow in the month of September last: that Mr. Muir asked him if he had seen Paine's book; and the witness answered that he had not, but would be much obliged to Mr. Muir for the loan of it: that the panel answered that he had not the book, but that he might buy it; upon which the girl was sent out to buy it: and when she returned with the book, she said she had purchased it at Brash and Reid's. The witness does not remember the price, but gave the girl the money with her. Being interrogated if he would have read the book if this conversation had not taken place? he answered, that he would have read it if he had seen it. And being interrogated if he would have purchased it? he said, he would not, if he could have borrowed it. When cross-examined, he deponed, that he never heard Mr. Muir speak about the constitution.

*John Barclay**

Deponed, That he is acquainted with Mr. Muir: that he had a conversation with Mr. Muir about Paine's book: that he asked Mr. Muir what book it was, when he answered, that he might buy it, if he chose, as it was printed; but afterwards said it was not a book for us, that he bought it for himself.

Upon Mr. Muir's interrogation deponed, That he is an elder of the parish of Calder, and that he voted on the same side with Mr. Muir in the election of a minister; that, in consequence of this, he was frequently with Mr. Muir; and, in his library, from which he borrowed some books; that he had many conversations with Mr. Muir, and heard him say, that this constitution was an excellent one, and the best in the world; that he has heard him praise the king, and always heard him speak of order, regularity, and obedience to the ruling powers; that he called upon Mr. Muir since he came to Scotland, who sent down a message that he could not see him, as he would have no correspondence with any who might be cited against him as witnesses on this trial, until it was finished.

James Campbell

Deponed, That he was present at the meeting of delegates from the Societies of Friends of the People, in December last, in Lawrie's room at Edinburgh; that he called there on his way home from the parliament house; that Mr. Muir was not there, but came in soon after, and read a paper, which, being shown to him, he admitted to be the same with the Address from the Society of United Irishmen of Dublin;* that colonel Dalrymple

* On taking the oath, Barclay qualified it, by saying he would tell the truth as far as he could recollect. *Orig. Edit.*

* The following is a copy of the Address:

"Address from the Society of United Irishmen in Dublin, to the Delegates for promoting a Reform in Scotland. William Drennan, chairman. Archibald Hamilton Rowan, sec.

"We take the liberty of addressing you, in the spirit of civic union, in the fellowship of a just and a common cause. We greatly rejoice that the spirit of freedom moves over the surface of Scotland, that light seems to break from the chaos of her internal government; and that a country so respectable for her attainments in science, in arts and in arms; for men of literary eminence; for the intelligence and morality of her people, now acts from a conviction of the union between virtue, letters, and liberty; and, now rises to distinction, not by a calm, contented, secret wish for a reform in parliament, but by openly, actively, and urgently *willing* it with the unity and energy of an embodied nation. We rejoice that you do not consider yourselves as merged and melted down into another country, but that in this great national question, you are still—Scotland,—the land where Buchanan wrote, and Fletcher spoke, and Wallace fought.

"Away from us and from our children those puerile antipathies so unworthy of the manhood of nations, which insulate individuals as well as countries, and drive the citizen back to the savage. We esteem and we respect you. We pay merited honour to a nation in general well educated and well informed, because we know that the ignorance of the people is the cause and effect of all civil and religious despotism. We honour a nation regular in their lives, and strict in their manners, because we conceive private morality to be the only secure foundation of public policy. We honour a nation eminent for men of genius, and we trust that they will now exert themselves not so much in perusing and penning the histories of other countries, as in making their own a subject for the historian. May we venture to observe to them, that mankind have been too retrospective, canonized antiquity, and undervalued themselves. Man has reposed on ruins, and rested his head on some fragments of the temple of liberty, or at most amused himself in paving the measurement of the edifice, and nicely limiting its proportions; not reflecting that this temple is truly catholic, the ample earth its area, and the arch of heaven its dome.

"We will lay open to you our hearts. Our cause is your cause—If there is to be a strug-

and others opposed the paper being read, and talked of taking a protest; that, after Mr. Muir read it, he said nothing more; but, before he read it, he spoke of answering it; but, in this, there was no vote taken: that he does not know how the paper came, and that a copy was afterwards sent him in a blank cover.

Being interrogated whether the purport of Mr. Muir's speeches approved or not of this paper, says, he knows nothing more than

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gle between us, let it be which nation shall be foremost in the race of mind: let this be the noble animosity kindled between us, who shall first attain that free constitution from which both are equi-distant, who shall first be the saviour of the empire.

"The sense of both countries with respect to the intolerable abuses of the constitution has been clearly manifested, and proves, that our political situations are not dissimilar; that our rights and wrongs are the same. Out of 32 counties in Ireland, 29 petitioned for a reform in parliament, and out of 56 of the royal burghs in Scotland, 50 petitioned for a reform in their internal structure and government. If we be rightly informed, there is no such thing as popular election in Scotland. The people who ought to possess that weight in the popular scale, which might bind them to the soil, and make them cling to the constitution, are now as dust in the balance, blown abroad by the least impulse, and scattered through other countries, merely because they hang so loosely to their own. They have no share in the national *firm*, and are aggrieved not only by irregular and illegal exaction of taxes: by misrule and mismanagement of corporations; by misconduct of self-elected and irresponsible magistrates; by waste of public property; and by want of competent judicatures; but, in our opinion, most of all, by an inadequate parliamentary representation—for, we assert, that 45 commoners, and 16 peers, are a pitiful representation for two millions and a half of people; particularly as your commoners consider themselves, not as the representatives of that people, but of the councils of the burghs by whom they are elected.

"Exclusive charters in favour of boroughs monopolize the general rights of the people, and that act must be absurd which precludes all other towns from the power of being restored to their ancient freedom.

"We remember that heritable jurisdictions and feudal privileges, though expressly reserved by the act of union (20th art.) were set aside by act of parliament in 1746; and we think that there is much stronger ground at present, for restoring to the mass of the people their alienated rights, and to the constitution its spirit and its integrity.

Look now, we pray you, upon Ireland. Long was this unfortunate island the prey of prejudiced factions and ferocious parties. The rights or rather duties of conquest were dreadfully abused, and the Catholic religion was made the perpetual pretext for subjecting the state by annihilating the citizen, and destroying not the religious persuasion, but the man; not popery, but the people. It was not till very lately, that the part of the nation, which is truly colonial, reflected that though their ancestors had been victorious, they themselves were now included in the general subjection; subduing only to be subdued, and trampled upon by Britain as a servile dependency. When therefore the Protestants began to suffer what the Catholics had suffered and were suffering; when from serving as the instruments they were made themselves the objects of foreign domination, then they became conscious they had a country; and then they felt—an Ireland.—They resisted British dominion, renounced colonial subservience, and following the example of a Catholic parliament just a century before, they asserted the exclusive jurisdiction and legislative competency of this island. A sudden light from America shone through our prison. Our volunteers arose. The chains fell from our hands. We followed Grattan, the angel of our deliverance, and in 1782 Ireland ceased to be a province, and became a nation. But, with reason, should we despise and renounce this revolution, as merely a transient burst through a bad habit; the sudden grasp of necessity in despair, from tyranny in distress, did we not believe that the revolution is still *in train*; that it is less the single and shining act of 82, than a series of national improvements which that act ushers in and announces; that it is only the herald of liberty and glory, of Catholic emancipation, as well as Protestant independence; that, in short, this revolution indicates new principles, foreruns new practices, and lays a foundation for advancing the whole people higher in the scale of being, and diffusing equal and permanent happiness.

British supremacy changed its aspect, but its essence remained the same. First it was force, and on the event of the late revolution it became influence: direct hostility shifted into systematic corruption, silently drawing off the virtue and vigour of the island, without shock or explosion;—corruption, that glides into every place, tempts every person, taints every principle, infects the political mind through all its relations and dependencies; so regardless of public character as to set the highest honours to sale, and to purchase boroughs with the price of such prostitution; so regardless of public morality, as to legalize the licentiousness of the lowest and most pernicious gambling, and to extract a calamitous revenue from the infatuation and intoxication of the people.

"The Protestants of Ireland were now sensible that nothing could counteract this plan of debilitating policy, but a radical reform in the house of the people, and that without such

that he proposed its being read and answered. Depones, That it was assigned as a reason for not receiving the address, that they had no connexion with it; that Mr. Muir thought there was no impropriety in receiving and answering it, and would take the burthen on his own shoulders.

James Denholm

Deponed, That he was present at a meeting of the convention in December; that Mr. Muir, was there and he heard him read that paper called the Irish address; that objections were made to its being read, and Mr. Muir answered,

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reform the revolution itself was nominal and delusive.—The wheel merely turned round, but it did not move forward, and they were as distant as ever from the goal. They resolved—They convened—They met with arms —They met without them—They petitioned. But all in vain—for they were but a portion of the people. They then looked around and beheld their Catholic countrymen. Three millions—we repeat it—three millions taxed without being represented, bound by laws to which they had not given consent, and politically lead in their native land. The apathy of the Catholic mind changed into sympathy, and that begot an energy of sentiment and action. They had eyes, and they read. They had ears, and they listened. They had hearts, and they felt. They said—'Give us our 'rights as you value your own. Give us a 'share of civil and political liberty, the elective 'franchise and the trial by jury. Treat us as 'men, and we shall treat you as brothers. Is 'taxation without representation a grievance 'to three millions across the Atlantic, and no 'grievance to three millions at your doors?— 'Throw down that pale of persecution, which 'still keeps up civil war in Ireland, and make 'us one people. We shall then stand, sup-'porting and supported, in the assertion of that 'liberty which is due to all, and which all 'should unite to attain.'

"It was just—and immediately a principle of adhesion took place for the first time among the inhabitants of Ireland —All religious persuasions found in a political union their common duty and their common salvation. In this society and its affiliated societies, the Catholic and the presbyterian are at this instant holding out their hands and opening their hearts to each other, agreeing in principles, concurring in practice. We unite for immediate, ample, and substantial justice to the Catholics, and when that is attained, a combined exertion for a reform in parliament is the condition of our compact, and the seal of our communion.

"British supremacy takes alarm. The haughty monopolists of national power and common right, who crouch abroad to domineer at home, now look with more surprise and less contempt on this 'besotted' people. A new artifice is adopted, and that restless domination which, at first, ruled as open war. by the length of the sword; then, as covert corruption, by the strength of the poison; now assumes the style and title of Protestant Ascendancy; calls down the name of religion from heaven to sow discord on earth; to rule by anarchy, to keep up distrust and antipathy among parties, among persuasions, among families, nay, to make the passions of the individuals struggle like Cain and Abel, in the very home of the heart, and to convert every little paltry necessity that accident, indolence, or extravagance bring upon a man, into a pander for the purchase of his honesty and the murder of his reputation.

"We will not be the dupes of such ignoble artifices. We see this scheme of strengthening political persecution and state inquisition, by a fresh infusion of religious fanaticism; but we will unite and we will be free. Universal emancipation with representative legislature is the polar principle which guides our society and shall guide it through all the tumult of factions and fluctuations of parties. It is not upon a coalition of opposition with ministry that we depend, but upon a coalition of Irishmen with Irishmen, and in that coalition alone we find an object worthy of reform, and at the same time the strength and sinew both to attain and secure it. It is not upon external circumstances, upon the pledge of man or minister, we depend, but upon the internal energy of the Irish nation. We will not buy or borrow liberty from America or from France, but manufacture it ourselves, and work it up with those materials that the hearts of Irishmen furnish them with at home. We do not worship the British, far less the Irish constitution, as sent down from heaven, but we consider it as human workmanship, which man has made, and man can mend. An unalterable constitution, whatever be its nature, must be despotism. It is not the constitution but the people which ought to be inviolable, and it is time to recognize and renovate the rights of the English, the Scotch, and the Irish nations.—Rights which can neither be bought or sold, granted by charter, or forestalled by monopoly, but which nature dictates as the birthright of all, and which it is the business of a constitution to define, to enforce, and to establish. If government has a sincere regard for the safety of the constitution, let them coincide with the people in the speedy reform of its abuses, and not by an obstinate adherence to them, drive that people into republicanism.

"We have told you what our situation was, what it is, what it ought to be: our end, a national legislature; our means, an union of the whole people. Let this union extend throughout the empire. Let all unite for all, or each man suffer for all. In each country let the people assemble, in peaceful and constitutional convention. Let delegates from

that he saw no harm in it. Colonel Dalrymple protested, and he believes, Mr. Bell did so also; but he does not remember Mr. Mortland being there: that he thought it possible it might be illegal: that he saw it on the table, but does not know whether Mr. Muir brought it or not: that he understood that Mr. Muir moved that an answer should be sent that this was dissented to, but he does not recollect for what reason, and he thinks that it was carried, that no answer should be sent. The address being shown to him, he admitted it to be the same which he had formerly signed.

Being interrogated by Mr. Muir; deponed, that he was in the convention all the days that it met: that he never heard him say any thing unconstitutional: that the purpose of the association was to get a reform in parliament: that he knows of no other object, but that he understood their object was an alteration, and that he was not a member of the convention.

Robert Forsyth

Deponed, That he was present at a meeting of the convention, that Mr. Muir was there and read a printed paper addressed to him: that there were some objections made to the reading of it: that the witness himself made one which was, That it was not expedient to have any connexion with others: that it was a paper which we ought not to have any thing to do with; that it was a paper containing some exceptionable passages such as, "an inviolable constitution was a tyranny," and the witness thought they should have nothing to do with it; at the same time he did not think it a seditious paper, but that it contained some expressions that were too strong. That Mr. Muir defended the paper, and proposed that it should lie on the table and be answered.

Upon Mr. Muir's interrogatories, the witness deponed, that he remembered the convention coming to a resolution of adhering to the genuine principles of the constitution; that the object was to reform the elections, and shorten the duration of parliament: that he was not present when a resolution was entered into about sedition, and for expunging such members as behaved riotously: that Mr. Muir proposed a suitable answer should be sent to the Irish address: that Mr. Muir never advised any deviation from the constitution: that he never heard him advise the people to sedition, tumult, or riot: and never heard him make any speeches that had that tendency.

William Muir.

The scruples of this witness having been removed, he was brought to the bar, and consented to take the oath. Deponed, That he was twice present in Wallace's house in Kirkintilloch, once before the society was formed, and once along with Mr. Muir: that Freeland was there, and Wallace: that at this meeting a copy of Paine's Works was taken out of the great coat-pocket of Mr. Muir: that he does not know whether Mr. Muir desired it to be taken out of his pocket: that he does not remember what was said about the book: that he is not sure that Mr. Muir spoke of the will of the people being the sovereign will, but that it was said that Paine said so; that he got eleven copies of the Patriot, and a copy of the Political Progress; that he got them from Mr. Muir in his father's house, at Huntershill, who bade him keep them, and to show them to a society he was in, which was a society for the purpose of purchasing and reading books.

Being interrogated by Mr. Muir, deponed, That he does not remember to have heard him speak against government; that Mr. Muir did not advise unconstitutional measures, that he heard him speak about the government; that he heard him tell how Old Sarum was represented.

Mr. *Muir* observed, that there was one of the witnesses for the Crown whom the lord advocate had omitted, viz. William Ross, esq. one of the justices of the peace for the county of Wigton.

The *Lord Advocate* answered, that he did not think it necessary to summon him.

Mr. *Muir* was very sorry that he was not summoned, as he had some material questions to put to Mr. Ross; but seeing his name in the list of witnesses for the Crown, he had not cited him in exculpation.

The *Lord Advocate* caused the sentence of fugitation against Mr. Muir to be read as follows,

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each country digest a plan of reform, best adapted to the situation and circumstances of their respective nations, and let the legislatures be petitioned at once by the urgent and unanimous voice of England, Scotland, and Ireland.

"You have our ideas. Answer us, and that quickly.—This is not a time to procrastinate. Your illustrious Fletcher has said, that the liberties of a people are not to be secured, without passing through great difficulties; and no toil or labour ought to be declined to preserve a nation from slavery. He spoke well; and we add, that it is incumbent on every nation who adventures into a conflict for freedom, to remember it is on the event (however absurdly) depends the estimation of public opinion; honour and immortality, if fortunate; if otherwise, infamy and oblivion. Let this check the rashness that rushes unadvisedly into the committal of national character, or *if that be already made*, let the same consideration impel us all to advance with active not passive perseverance, with manly confidence and calm determination, smiling with equal scorn at the bluster of official arrogance, and the whisper of private malevolence, until we have planted the flag of freedom on the summit, and are at once victorious and secure."

SENTENCE OF FUGITATION.

February 25, 1793.

The which day the diet of the criminal letters, raised and carried on at the instance of Robert Dundas, esq. of Arniston, his majesty's advocate for his majesty's interest against Mr. Thomas Muir younger of Huntershill, advocate, being called, and the said Mr. Thomas Muir having been ofttimes called in court, and three times at the door of the courthouse, he failed to appear.

Whereupon his majesty's advocate moved, that sentence of outlawry and fugitation might be awarded against him; and as he understood that bail had been given for his appearance, when apprehended by the sheriff of the county of Edinburgh, he craved that the penalty in the bond might be forfeited and recovered.

"The lord justice clerk, and lords commissioners of justiciary decern and adjudge the said Thomas Muir to be an outlaw and a fugitive from his majesty's laws, and ordain him to be put to his highness's horn, and all his moveable goods and gear to be escheat and inbrought to his majesty's use, for his contempt and disobedience in not appearing this day and place in the hour of cause, to have underlyen the law for the crimes of sedition, and others specified in the said criminal letters raised against him thereanent, as he who was lawfully cited to that effect, and oftentimes called in court, and three times at the door of the court-house, and failing to appear as said is. And ordain the bond of caution; granted for the appearance of the said Mr. Thomas Muir, in the sheriff-court books of Edinburgh, to be forfeited, and the penalty therein contained to be recovered by the clerk of this Court, to be disposed of as the court shall direct.

(Signed) ROBT. M'QUEEN, J. P. D.

The *Lord Advocate* then proposed to prove the declarations before the sheriff, and the papers that were found upon Mr. Muir when before the magistrate at Stanraer. In order to save time and trouble, Mr. Muir agreed to admit them without proof, but under this express condition, that none of these papers should be used in evidence against him of any criminality.

If these papers, said Mr. Muir, had afforded any weighty discoveries of my guilt, the indictment should have so stated. It was impossible that these papers could afford the smallest presumption against me, and therefore there is not a single article of the indictment alleging that they were of a culpable tendency. It is indeed asserted in the libel, that these papers were found upon me; but that they are of a felonious or a seditious tendency, is no where set forth. In the concluding proposition of the indictment, in which the whole criminal charge is recapitulated, these papers are passed over in silence. In proof of this permit me to read the conclusion.

"At least, times and places above mentioned, the said seditious speeches and harangues were uttered, the said seditious books or pamphlets recommended to be purchased and perused, the said seditious books or pamphlets circulated and distributed, as aforesaid, and the said wicked and inflammatory address produced, read, recommended, and approved of in manner above-mentioned; and the said Thomas Muir is guilty actor, or art and part, of all and each, or one or other of the aforesaid crimes. All which, or part thereof, being found proven, by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary in a court of justiciary to be holden by them within the criminal court-house of Edinburgh, the said Thomas Muir ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

The *Lord Advocate*, in reply, stated, that he was intitled to bring forward every circumstance which could criminate the panel, although these circumstances were only collateral, and not in issue or necessary in the conclusion.

The clerk of court accordingly read the following documents:—

DECLARATION of Mr. Muir before the Sheriff.

At Edinburgh, the 2nd of January 1793.

The which day compeared, in presence of John Pringle, esq. advocate, his majesty's sheriff-depute of the shire of Edinburgh, Thomas Muir, esq. advocate; who, being examined by the sheriff, and being interrogated, Whether or not the declarant, in the month of November last, was in the towns of Kirkintilloch, Lennoxtown of Campsie, or Milltown of Campsie? declares, That he declines answering any questions in this place, as he considers a declaration of this kind, obtained in these circumstances, to be utterly inconsistent with the constitutional rights of a British subject: that he has solemnly maintained this principle in pleading for others in a criminal court, and that, when it comes to be applied to his own particular case, as at present, he will not deviate from it: declares, That he neither composed, published, nor circulated books or pamphlets, inflammatory or seditious: that, in public and private, he always advised, and earnestly entreated those who might be engaged in the prosecution of a constitutional reform, in the representation of the people in the House of Commons, to adopt measures mild but firm, moderate but constitutional; and that he has always inculcated upon all whom he may have addressed upon any occasion, that there was no other mode of accomplishing a constitutional reform, in the representation of the people in the House of Commons, but by the mode of respectful and constitutional

petitions to that House, for that purpose: and that he did not doubt but the wisdom of that House would listen to the voice of the people, when thus constitutionally presented: and being shown three numbers of a paper, intituled, "The Patriot," the first dated, "Tuesday, April 17th, 1792;" the second dated, "Tuesday, June 12th;" and the third, "Tuesday, July 10th;" without mention of the year; and being interrogated if he gave these pamphlets to William Muir, weaver in Kirkintilloch, and eight other numbers of the same publication? declares, That he adheres to the principles which he has mentioned in the preceding part of this declaration, and declines answering the question. And being shown a book, intituled, "The Works of Thomas Paine, esq." and interrogated, If he did not give said book to Henry Freeland, weaver in Kirkintilloch, and first preses of the reform society there? declares, That he adheres to his principle, and declines answering the question. And being shown a pamphlet, intituled, "A Declaration of Rights," and an "Address to the People;" and interrogated, Whether or not he gave the aforesaid pamphlet to the said Henry Freeland? declares, That he declines answering upon the aforesaid principle. And being interrogated, Whether or not he gave to the aforesaid Henry Freeland, a book, intituled, "Flower on the French Constitution?" declares, That he declines answering the question upon the aforesaid principle; and all the beforementioned books are marked as relative hereto, of this date. And being interrogated, Whether or not the declarant was a member of the Convention which met in Edinburgh, in the month of December last, styling themselves the Convention of the Associated Friends of the People, and produced to that meeting, a paper, intituled, "Address from the Society of United Irishmen in Dublin, to the Delegates for Reform in Scotland, 23rd November 1792," and moved, that the thanks of the meeting should be returned to that society, for said address? Declares and declines answering the question, upon the aforesaid principle. All this he declares to be truth.

(Signed) THOMAS MUIR.
JOHN PRINGLE.

COPY DECLARATION of George Williamson.

At Edinburgh, August 10, 1793.

George Williamson, messenger in Edinburgh, declares, That on Friday, the 2nd of August instant, he received a warrant of the court of justiciary, for bringing the person of Mr. Thomas Muir, younger, of Huntershill, from the prison of Stranraer, to the prison of Edinburgh; in consequence of which he went to Stranraer, and arrived there on the morning of Sunday the 4th instant, when he received the person of the said Thomas Muir; and he also received from Mr. Kerr, one of the magistrates of Stranraer, a parcel, sealed, and intituled "Papers belonging and found on Mr. Thomas Muir, W. R. J. P." And which packet was sealed with the seal of the burgh of Stranraer, and also with two seals, which he now hears Mr. Muir declare to be his, and which parcel he now exhibits, with the seals entire.

And the foresaid parcel having been opened, in presence of the said sheriff substitute, Hugh Warrender, esq., Mr. William Scott, procurator fiscal of the shire of Edinburgh, George Williamson, messenger in Edinburgh, and Joseph Mack, writer, sheriff clerk's office; and also, in presence of Mr. Thomas Muir, who admitted, that this was the parcel containing the articles belonging to him, which were sealed up by the magistrates of Stranraer, and to which he then affixed his seals, and which he observed to be entire, previous to its being opened in his presence: the same was found to contain,

1. Ten copies of a pamphlet, intituled, "Proceedings of the Society of United Irishmen of Dublin. Dublin, printed by order of the Society, 1793."
2. A printed copy of the trial, at large, of Samuel Bushby, and Judith his wife.
3. Twenty-nine copies of a printed paper, intituled, "United Irishmen of Dublin, 7th June 1793," being an address from the Catholic committee to their Catholic countrymen.
4. Five copies of another printed paper, being, "Resolutions of the Society of United Irishmen, held on the 15th of July."
5. Twenty-two copies of a paper, purporting to be an abstract of the trial of Francis Graham, esq. one of his majesty's justices of peace for the county of Dublin, on the 9th July 1793, before the hon. baron Power.
6. A printed copy of an act to prevent tumultuous risings, &c. of the 27th Geo. 3, printed Dublin, 1787.
7. Eighty-four copies of a printed paper, dated, "Rath Coffey, 1st July, 1793;" containing a quotation from Milton, on the liberty of unlicensed printing.
8. Letter, signed J. Muir, dated "Glasgow, 21st July 1793;" beginning with, Dear Sir, but having no address.
9. Letter, signed Thomas Muir, and addressed to captain George Towers, of the American ship, the Hope, from Baltimore, care of Messrs. Cunningham, and Co., merchants, Belfast, and dated Dublin, 27th July, 1793.
10. A red Turkey pocket-book, containing:

1. A passport from the department of Paris, in favour of citizen Thomas Muir, dated 23rd April, 1793, having upon the back an indorsement, dated 5th May, 1793.
2. Receipt by A. M'Dougal to Mr. Muir,

for 900 livres, for his passage in the cabin of the ship from Havre-de-Grace, to the port of New York, dated Havre-de-Grace, 16th May, 1793.

3. Certificate that Thomas Muir has been duly elected one of the members of the Society of United Irishmen of Dublin, dated 11th January, 1793, signed Archibald Hamilton Rowan, secretary.

4. Sealed letter, directed, "The Rev. Thomas Fische Palmer, Edinburgh."

5. Ditto, directed, "Norman M'Leod, esq. M. P. Scotland."

6. Ditto, directed "to Mrs. M'Cormick, at Dr. M'Cormick's, St. Andrew's, Scotland."

7. Another passport, of the department of Calais, in favour of citizen Thomas Muir, dated 15th January, 1793.

8. Passport of the Commissary of the Section of the Thuilleries, in favour of citizen Thomas Muir, dated 4th May, 1793.

9. Declaration of residence, dated 3d April, 1793, in favour of Thomas Muir.

10. Letter, signed D. Stewart, dated, No. 52, Frith-street, Soho, London, February 1st.

1st. (Addressed) John Hurford Stone, esq.; or Thomas Muir, esq. advocate, No. 99, Palais Royal, Paris.

11. Letter, signed James Campbell, dated No. 10, St. Andrew's-square, Edinburgh, 26th January 1793: addressed to Thomas Muir, esq. younger, of Huntershill.

12. Letter, signed D. Stewart, dated, 52, Frith-street, January 30; addressed, Thomas Muir, esq. advocate, to the care of John Hurford Stone, esq. Paris.

13. A Letter, signed W. Skirving, without date, addressed to Thomas Muir, esq. younger, of Huntershill.

COPY CERTIFICATE.

Society of United Irishmen of Dublin: I hereby certificate, that Thomas Muir has been duly elected, and having taken the test, provided in the constitution, has been admitted a member of this society.

(Signed) ARCH. HAMILTON ROWAN, Sec.
No. 205, *Jan.* 11, 1793.

On the margin of the original is the figure of a harp, with this motto, "It is new strung, and shall be heard."

Which whole pieces of writings, printed papers, and letters, were signed by the initials of the sheriff-substitute, Mr. Scott, George Williamson, and Joseph Mack, of this date; and those taken out of the pocket-book were again replaced in the pocket-book; and the whole of the said writings, &c. were also signed with the initials of Mr. Muir, excepting the three sealed letters, which he declined to put his initials to, in regard he did not consider them as his property. He further required that the sheriff-substitute should immediately transmit these three letters to the respective persons to whom they are addressed, as any other proceeding would be a violation of the private rights and property of the persons to whom they belong. Scott, on the part of the public prosecutor, represented, that this last request cannot in his opinion be complied with, seeing these letters, with the other papers in the sealed parcel, were transmitted to this office under warrant of the court of justiciary, for the purpose of being inspected.

Receipt of CAPTAIN M'DOUGAL, for MR. MUIR'S passage from Havre-de-Grace to New York.

Received from Mr. Muir, the sum of nine hundred livres, for his passage in the cabin of the ship, from Havre-de-Grace to the port of New York, in finding him with all stores. A. M'DOUGAL.

Havre-de-Grace, May 16, 1793.

PASSPORT AT PARIS.

REPUBLIQUE FRANCAISE, DEPARTEMENT DE PARIS.

Passeport délivré en execution de la loi du 7 Decembre, 1792, l'an premier de la Republique Française.

Vu l'avis du Conseil general de la Commune de Paris, laissez passer le citoyen Thomas Muir, allant a Philadelphie, domicilié a Paris, municipalité de Paris, departement de Paris, natif d'Ecosse, homme de loi, âgé de vingt huit ans, taille de 5 pieds 3 pouces, cheveux et sourcils chatain, yeux bleux, nez aquilin, bouche moyenne, menton rond, front haut, visage long et plein,—prêtez-lui aide et assistance, au besoin.

Fait en directoire, le 23 Avril mil sept cent quatre vingt treize; l'an deuxieme de la République Française; et a ledit citoyen Muir signé avec nous administrateurs composant le Directoire du Departement de Paris. Approbatif.

THOMAS MUIR. LEBLANC,
DUBOIS. NICOLEAU, *presid.*
E. J. B. MAILLARD.

Vu par nois Ministres des Affaires Estrangeres. A Paris, le 29 Avril l'an 2me de la Republique.

LE BRUN.
MAILLIE, GARAT, *Gr.*

PASSPORT AT CALAIS.

REPUBLIQUE FRANCAISE, AU NOM DE LA LOI.

Departement du Pas-de-Calais, District, Municipalité de Calais.

Laissez passer le citoyen Thomas Muir, Ecossais, domicilié a Edinburgh, municipalité de —— district de—— department de—— a gé de 28 ans, taille de 5 pieds 3 pouces, cheveux,

sourcils, chatain, yeux bleus, nez aquilin, bouche moyenne, menton rond, front rond, visage long et plein; et pretez-lui aide et assistance en cas de besoin, allant en France, et due a l'etranger.

Delivré en la Maison Commune de Calais, le 15 Janvier, 1793, l'an premier de la Republique Française.

THOMAS MUIR.
MAUSSY, *Officier Municipal.*
CELLIERBOULLIE, *Secretaire et Greffier qui a signé avec nous le present.*

When the lord advocate desired the letter signed J. M. to be read, Mr. Muir arose and objected to that and the other papers being read; not that he cared for their being read, but because they had nothing to do with his trial. He was certain there was no paper found on him which he would wish to conceal; but there was nothing in the indictment charging criminality on those papers.

[Here Mr. Muir read the passage in the indictment, in which the papers and pocket-book are mentioned.]

He said, not a single word of criminality was surmised in the libel in the part that refers to the papers. He was therefore entitled to contend that in point of general justice, these papers ought not to be read; that he saw it was vain for him to make any objection; however strong it might be in law, it was sure to be over-ruled; but every mind tinctured with humanity, would shrink at the wanton disclosure of the anxiety and the grief of a private family, for the purpose of indulging an idle curiosity.

The *Lord Advocate.* I wish to indulge no idle curiosity; but I have a right to have read what I conceive necessary to establish my charge; and I shall afterwards have an opportunity of showing their import. All I wish at present is, to show that he was conscious of his guilt: nay I go farther, his defence of being prevented from returning, and his voluntarily surrendering himself, are all assertions standing contradicted by these letters.—But these circumstances are only collateral; not in issue, nor necessary in the conclusion.

Mr. *Muir.* I will trifle no longer upon this subject. I am conscious of no guilt: there is nothing in the papers which I wish to conceal on my own account; I gladly join issue with the prosecutor, and consent to these letters being read.

The clerk of court then read the following letters:

LETTER from J. MUIR, to CAPT. GEORGE TOWERS.

Glasgow, 21 July, 1793.

Dear Sir;—I am at a very great loss how to answer your letter, as it's not understood by me; but if it's the friend that I have, if it's he, I would be overjoyed to see his hand-writing, and to know what has become of him these three months. I thought he had been at Philadelphia ere now, where letters are forwarded for him; and if you are to stay any time at Belfast, be so kind as to write in course, and I will come over and see you and him. You can write the time you mean to stay. Mr. John Richardson, a son of deacon James Richardson, I saw him this week at Greenock, where he is to sail in the Almy of New-York directly, who has two packets of letters for him; and there is many letters wrote for him to the first people in America. And once he were there, he 'll get letters to general Washington; and I hope, dear sir, you'll show him every civility in your power, which I hope some day gratefully to thank you for it. There is a trunk also in the Almy for him, which Mr. Richardson will deliver into his own hand. Only I sincerely wish you a safe, pleasant, and successful voyage, and a happy meeting with your friends. And I remain, dear sir, your most humble servant,

J. MUIR.

If it's the person I mean, a cousin of his, William Muir, formerly of Leith, is lying at Philadelphia. His ship is an American bottom. The loss of this young man has been a dreadful affliction to us. Please give our friend this letter. I honoured his draft in favours of Mr. Masey. He'll get his letters at the post-office Philadelphia.

I hope in a year or two he can return, if he doth not love America; and be so good as cause him write me one line in your letter. *You can direct it;* and if he doth not *chuse to sign it,* you can put to your initials.

(The Address torn off.)

LETTER from THOMAS MUIR, to CAPT. GEORGE TOWERS.

Dublin, 27th *July,* 1793.

Dear Sir;—This day I received your's, and will be down upon Tuesday evening. I have taken my place in the coach for to-morrow. I am happy to hear my friends are well. I will write them from Belfast. Of this you can give them information. I am, dear sir, your respectful friend,

THOMAS MUIR.

Capt. George Towers, of the American ship the Hope, from Baltimore.—Care of Messrs. Cunningham, and Co. merchants Belfast.

After these papers had been read, the lord advocate declared the proof finished on the part of the Crown, and Mr. Muir commenced his proof in exculpation.

PROOF IN EXCULPATION,

*William Skirving**

Depones, That it was thought proper that

* See his trial for sedition, in this volume, *infrà.*

Mr. Muir should attend a meeting of the Friends of the People in London: that on this account he left Edinburgh, and went to London, in January last: that he received a letter from Mr. Muir, dated from London, mentioning that he had appeared in the Society at London, of which Mr. Grey [Charles, afterwards second earl Grey] is a member, and giving an account of what had been done there: that owing to some late circumstances which occurred in his family, he cannot at present find Mr. Muir's letter; but that, according to the best of his recollection, he thinks Mr. Muir wrote him, that it was the opinion of some friends, that the event which was then dreaded to happen in France, would be of great detriment to the common cause; and it was supposed that if Mr. Muir were to go to France, he might have some influence with the leading people in mitigating the fate of the king. That while Mr. Muir was at Paris, he received a letter from him, mentioning that he was too late to effect the object of his journey and that he would return as soon as his friends should be of opinion his presence was necessary in Scotland: that he has been frequently with Mr. Muir in private, and has often heard him speak in public in the societies: that he never heard him speak against the constitution, or advise the people to disorder or sedition, but that he always inculcated upon them, that there was no other mode of obtaining the proposed reform, than by applying to parliament by respectful petitions: and that Mr. Muir never submitted to his consideration any plan of government; that the general tenour of Mr. Muir's address to the people in the societies was, to impress upon their minds the necessity of good order, and that before they attempted public reformation, they should begin by reforming themselves: that he does not believe Mr. Muir is connected with any society, abroad or at home, for the purpose of exciting sedition: that he never heard Mr. Muir speak against the monarchical part of our constitution, and that he has been in his company in his most unguarded moments: that he remembers a private conversation with Mr. Muir, in which he disapproved of many of the principles in Paine's book, and both agreed that many of them were impracticable: that he was happy to find the panel of this opinion, and he then told the panel, that he had put his thoughts concerning Paine in writing, and that he had some intention of drawing them up in the form of lectures, and delivering them publicly against Paine. Mr. Muir was highly pleased with the plan, and said that he would take eighty or an hundred tickets from the deponent.

Upon the interrogation of the lord advocate, if he was not the person who had designed himself, on a late occasion, secretary general to the Association of the Friends of the People;—answered, That it was a mere mistake in writing out the petition, for he was secretary to the General Association of the Friends of the People.

Being interrogated by Mr. Muir, if he remembered the tenor of the answer which he proposed in the Convention to the Address of the Society of United Irishmen in Dublin, depones, That he cannot recollect. It being observed that he was concerned with Mr. F. Palmer in a seditious hand-bill, the witness stated, that he had received a summons to attend Mr. Palmer's trial at Perth: that if it was intended to try him for that paper, he supposed the trial had fallen of course; but, however, the witness did not intend to plead that circumstance with a view of avoiding the trial; he would not flinch from it.*

* In the Appendix to one of the printed accounts of this trial, the following article was inserted:—

LETTER from W. SKIRVING to D. STEWART, esq. No. 52, Frith-street, Soho, London; Secretary to the Society of the Friends of the People.

Edinburgh, Sept. 2, 1793.

Sir;—I ought to have wrote you on Saturday, to give your Society the means of contradicting the aspersion, which you will see by the accounts of Mr. Muir's trial, has been thrown upon them. I have not been able to command a settled thought since the alarming issue of that astonishing trial. I never had a higher opinion of any person's integrity, uprightness, and philanthropy; nor is it diminished, but increased. The feelings which I must therefore have had, since that event, will plead my excuse with men of feeling.

In the evidence which I was called on to give, I stated the reason for his going to London, and that I had received a letter from Mr. Muir, when at London, explaining the cause of his proceeding to Paris; which letter I was very sorry that I could not produce, though I had preserved it carefully. Being desired to state, if I could recollect the reason which Mr. Muir assigned in that letter for his journey to Paris, I said, that it was the opinion of friends, that if Mr. Muir would go to Paris, he might have great influence with many to mitigate the sentence of the French king. These friends were taken for your society; and much freedom was used, to reprobate both the Society of the Friends of the People in London, for presuming to send a missionary into another country, and Mr. Muir, for accepting such commission. But I declare, upon my honour, that the thought of his being sent by the Society of the Friends of the People in London, never came into my mind: and if I expressed myself so, which it is impossible I could do, I expressed a falsehood; and which I am bound, in justice to the Society, in this manner to contradict.

Mr. Muir is behaving with astonishing manliness.

I am, Sir, your obedient humble servant,

W. SKIRVING

James Campbell

Depones, That in the beginning of last winter, he acted as agent for Mr. Muir: that while the panel was in France, he received from him two letters from Paris, and that he had brought these letters with him; he was desired by the panel to read them; upon which the witness handed them to the clerk of the court, and also another letter subscribed James M'Intosh,* London, which was first read: and the witness being interrogated by the Court what Mr. M'Intosh it was from whom he had received this letter, the panel answered, that it was the author of the *Vindiciæ Gallicæ*. The letters were as follows:—

LETTER from Mr. MUIR to Mr. CAMPBELL, writer to the Signet, Edinburgh.

Paris, Jan. 23, 1793.

Dear Sir;—I wrote you from Calais and from Paris, and impatiently expect your answer. Write me fully about my private affairs, but *about nothing else*. Whenever you and my friends judge it expedient or proper, I will immediately return, but I cannot leave Paris without regret. I am honoured by the notice and friendship of an amiable and distinguished circle, and to a friend of humanity it affords much consolation, to find according feelings in a foreign land. Present my best wishes to all our friends, to Messrs. Johnston, Skirving, Moffat, Buchanan, &c, Intreat you to find means to send over the numbers of the two Edinburgh newspapers. The London papers come here but irregularly. One wishes to know what is going on at home; but tell my friends, it is only through the channel of newspapers I can receive that intelligence. Write me under the following cover, "Au Citoyen de Coudile, hotel de Toulon, No. 1, rue des Fosses du Temple." Communicate this address to all my friends. Inform them no letter can reach me, if not part of the postage is paid in Edinburgh.—I am, dear sir, yours, &c. THOMAS MUIR.

James Campbell, Esq. Writer to the Signet, Edinburgh, Scotland.

P. S.—My compliments to Mr. Dick; entreat him to take the charge of my things.

Second LETTER from Mr. MUIR to Mr CAMPBELL.

Paris, 27th *Jan.* 1793.

Dear Sir;—I have written you frequently, whenever you think it proper I shall return. At the same time, honoured as I am by the civilities and attention of many amiable characters, it would be with reluctance I could quit Paris for a month or two. About my private business write me, but not a word on any other subject. Remember me to Johnston, Skirving, Moffat, &c. Tell them no distance of space shall obliterate my recollection of them. Write me punctually, I intreat you. Cause them likewise write me. Omit no post. My address is under cover, "Au Citoyen Coudile, hotel de Toulon, No. 1, rue des Fosses du Temple."—I am, yours, &c.

THOMAS MUIR.

James Campbell, Esq. Writer to the Signet, Edinburgh, Scotland.

LETTER from Mr. M'INTOSH to Mr. CAMPBELL.

Sir;—I have to acknowledge the receipt of your letter respecting the business of Mr. Muir. I did not lose a moment in finding a safe and speedy conveyance to him at Paris for your letters, and those of his other friends in Scotland, sent to my care. I delayed from day to day in the perpetual expectation of seeing Mr. Muir here on his return. It is now, however, become necessary for me to inform you, that he is not yet come; and, considering the extreme anxiety which he must have felt to return as soon as possible, I think it very probable that this delay ought to be ascribed to the embargo laid on the vessels in the ports of France, which may perhaps have rendered it impossible for him, though even at Calais, to make his passage to England. I think this probability at least sufficiently great to be pleaded for a delay of his trial, and it is to enable you and his friends to make any use of it that you may think fit, that I have now thought it necessary to

* In two of the Reports of Mr. Muir's Trial, the following article is inserted:—

Letter to the Friends of the People.

[Published in the Edinburgh Gazetteer, March 1st, 1793.]

Paris, February 13, 1793.

Upon the evening of the 8th of this month, I received letters from my father, and from my agent, Mr. Campbell, informing me that an indictment was preferred against me, that my trial was fixed for Monday the 11th instant; the distance, and the shortness of the time, could not permit me to reach Edinburgh by that day. War is declared between England and France, and the formalities requisite to be gone through before I could procure my passport, would at least have consumed three days. I will return to Scotland without delay.—To shrink from danger would be unbecoming my own character, and your confidence; I dare challenge the most minute investigation of my public and private conduct. Armed with innocency, I appeal to justice; and I disdain to supplicate favours. I have hastened to give you an account of my intention; and I am happy that a private gentleman, who leaves Paris to-morrow, affords me an opportunity for the communication.

THOMAS MUIR.

* In 1803 Mr. Mackintosh was appointed recorder of Bombay, on which occasion he also received the honour of knighthood.

communicate this state of facts to you.*—I am, sir, yours, &c. JAMES M'INTOSH.

St. Charlotte Street, Portland Place, Feb. 7, 1793.

Upon the panel's interrogatory, he depones, That he never heard him attempt to excite the people of the societies to sedition or outrage; that he exhorted them to avoid riotous conduct, to behave orderly, peaceably, and, above all, to attend to the moral characters of those whom they admitted members: that he also remembers Mr. Muir's opinion of Mr. Paine's book was, that it might be dangerous for people of weak minds.

John Buchanan

Depones, That he has often heard Mr. Muir speak in the societies: that he never advised sedition, riot, insurrection, nor unconstitutional measures, but, that they should act peaceably and orderly: that he said, the constitution ought to direct all their applications to parliament; and, that he used to say in conversation, that the constitution ought to be to us the polar star, and that we should begin our reformation by first erecting among ourselves the temple of morality: that he had more sense than to think of procuring a redress of grievances by any other than constitutional measures. The witness never heard the panel recommend any pamphlets, nor ever heard him express any opinion about Paine; but that he always wished the people to inform their minds.

*William Johnston**

Depones, That he never heard Mr. Muir harangue the people to excite sedition: that he had heard him speak in several public meetings; and though he could not condescend upon particular expressions, he could recollect the general tenor of his speeches, which was for firmly supporting the constitution as it stood at present; and that all the other principles held by him grew out of this one; that Mr. Muir never advised tumult, but recommended sobriety, and said, that nothing would do but an application to parliament by way of petition; that it is inconsistent with his knowledge that Mr. Muir circulated any books or pamphlets; that while Mr. Muir was in France, he received from him one or two letters upon general subjects, but that he remembers Mr. Muir expressed in them his intention of returning soon to this country; that he had sought for these letters, but could not lay his hand upon them.

Maurice Thomson

Depones, That he once heard Mr. Muir in a society of the Friends of the People deliver a speech, but does not remember much of it; that he heard him speak about reform, measures which were constitutional, and the necessity of being moderate, and never heard him advise the people to excite disturbances.

Charles Salter

Depones, That he was present three or four times in societies with Mr. Muir: that he always heard him telling the people to follow constitutional measures: and that if ever they did any thing unconstitutional, he would be the first man to oppose them.

Peter Wood

Depones, That he has heard the panel speak in societies: that the general tendency of his addresses to the Friends of the People, was exhorting them to support the constitution and to petitition parliament: that he never heard him speak against the King or House of Lords: that he never saw him distribute any books or pamphlets; and that he heard him say, no members should be admitted into the societies who were inclined to faction.

David Dale, jun.

Depones, That he has seen Mr. Muir at the Star Inn at Glasgow, in meetings of the Friends of the People: that he remembers a motion was made, that political books should be recommended to the society: that this motion was opposed by Mr. Muir, who argued, that most books were written too much in the spirit of party: that no truth could be got from them, and that the only way to procure knowledge was by general reading: that he advised the people to inform themselves on both sides of the question;—to seek reform by measures calm and constitutional: and that they had no other mode of obtaining it than by petitioning parliament; that he never heard him say any thing which had a tendency to excite sedition: and that he always advised the people to be quiet and orderly: that he never knew of his distributing books, or recommending Paine's Works: and that he advised the Friends of the People to expel any member who might behave seditiously or disorderly: and said he would absent himself if unconstitutional measures were adopted.

Mr. *Muir* asked him, if ever he heard him speak against the constitution?

Witness. Will you be pleased, Mr. Muir, to explain what you mean by the constitution, and then I shall be able to answer the question?

Mr. *Muir.* Did you ever hear me say any thing against the King, Lords, and Commons?

Witness. I never did.

Being interrogated by the lord advocate, Depones, That it was at a meeting of the Friends of the People, at the Star Inn, that he heard Mr. Muir oppose the recommending of particular books: that he does not recollect the particular month when this occurred.

* See the proceedings against him before the Court of Justiciary, for a Contempt, p. 43 of this volume.

Being interrogated, if he recollects when Mr. Muir was first apprehended, depones, he could not precisely. Being asked, if he thought it was in the month of January, or in any of the succeeding months; depones he could not be positive but thinks he might have heard it about five months ago.

Lord Advocate. You have a very short memory Mr. Dale.

Witness. I have a very short memory, my lord.

William Riddell

Depones, That he has been present at several meetings at Glasgow with Mr. Muir: that he never heard him recommend any books or pamphlets: that he heard him advise the people to peace and good order, and not to admit immoral characters among them: that the meetings were frequently numerous, but the witness never saw any disorder in them.

William Reid

Depones, That he is a bookseller in Glasgow, and acts in the company under the firm of Brash and Reid: that he remembers to have asked Mr. Muir's opinion about the propriety of selling Paine's book: that Mr. Muir said it was an improper book, and that in selling it there might be danger.

Mr. Muir then questioned Mr. Reid, if ever he heard him say any thing against the constitution of this country.—Mr. Reid replied, he never did.

Being questioned by the Court respecting the time when he had this conversation with Mr. Muir, he said he could not remember the particular month or day; being asked if he could remember any circumstances that might lead to a recollection of the time he had said conversation with Mr. Muir, he replied, it was a few days before Mr. Honeyman, the sheriff of the county, came to take precognitions concerning that book.

George Waddel

Depones, That he has been at meetings of the societies of the Friends of the People in Glasgow: that at one of these meetings, he remembers col. M'Leod and Mr. Muir being present: that when a motion was made for recommending particular books, both col. M'Leod and Mr. Muir opposed it, as in most books there was too great a mixture of truth and falsehood: that the only books which he remembers the panel to have recommended, were, Blackstone's Commentaries upon the Laws of England, and Erskine's Institutes of the Laws of Scotland: that Mr. Muir advised moderate measures: that this was the continual subject of his discourse: that he said he would glory to have the table of the House of Commons covered with petitions: that he spoke to Mr. Muir about an address of congratulation to the French in imitation of Dundee, but that Mr. Muir disapproved of it.

John Russel.

After this witness had been sworn, the common question was put to him, if any person had instructed him what to say? He answered, None, except to tell the truth. Being asked who instructed him so? He replied, he could point out no person in particular, but that it was the general advice of all to whom he spoke. He was obliged to produce his summons to be a witness, and it appeared that the citation had been given him only four days before his examination. He was informed by the Court that any who spoke to him, must have done so in the interval of these four days, and that therefore it was impossible that he could forget all their names. The witness replied, that the general instruction to speak the truth was so common, that he could not remember at present, any particular person who had given it.

The *Lord Advocate* moved, That the witness should withdraw; and observed that as there appeared evident signs of a desire to conceal the truth in this man, he hoped their lordships would punish him by ordering him to be committed to prison.

Mr. *Muir* arose, and attempted to speak in defence of the witness, but as he was beginning, was interrupted by the Court, who commanded him to sit down, as he had no right or title to interfere in the business.

Lord *Henderland* gave his opinion: Every appearance was against the witness; that he wished to conceal the truth; that he merited punishment, and should be committed to prison for a certain period.

The rest of the judges concurred with lord Henderland; and Mr. Russel was committed to prison for the term of three weeks, as guilty of concealing the truth upon oath*.

* In the Appendix to two of the editions of this trial, the following article relative to the examination of this witness was inserted:

ADDRESS TO THE PUBLIC.

In the different accounts which have been published of Mr. Muir's trial, mention is made of my having been committed to prison for prevarication, or an attempt to conceal the truth. These accounts, in so far as they regard me, being defective, I think it incumbent upon me, in justice to myself and my character, to present the public with a candid statement of the whole matter.

Being called to the bar of the court, and having taken the oath to tell the whole truth, and nothing but the truth, I was interrogated, "Has any person instructed you what you should say?" I answered, None; but mentioned that several persons had desired me to tell the truth. I was then asked, who had done so? My answer was, that I did not recollect; but that no person had given me any particular instructions, what I alluded to having been only the general observation of

John Brock

Depones, That he was at one meeting of the Friends of the People, in the Star Inn at Glasgow, where he heard Mr. Muir recommend adherence to the constitution, and to good order, and that he declared, he would leave the Friends of the People, if ever they should proceed to riotous measures: that he has heard him speak of books of the law, but cannot be positive to any in particular, only he thinks he remembers to have heard him mention a work of Mr. Locke's.

William Cliddesdale

Depones, That he never joined himself to any society of the Friends of the People, but that he is a member of the society in Glasgow, for the reform of the boroughs: that about the 13th of December last, Mr. Muir, when the witness was present, visited that society, said that the borough reformers had made great exertions; recommended to them perseverance, firmness, and measures which were peaceable; that he did not exhort them to riot or insurrection: that he remembers of hearing Mr. Muir observe, that there were some things in Paine's book, which might be good in the sight of some men, but many bad, and that for his part, he thought his system was impracticable: that he reprobated Liberty and Equality, as it implied violation of property, and assigned, that a division of property was a chimera which never could exist.

George Bell

Depones, That in the society of the Friends of the People at Glasgow, he has heard Mr. Muir speak, and that he has heard him declare, that he would admit no members into the society, but such as acknowledged the King, House of Lords, and House of Commons: that he never heard him speak against the constitution; and that he did not recommend any books in particular, but only such books in general as gave moral instruction, inculcated sobriety, and tended to make men good members of society.

Rev. *Daniel M'Arthur*

Depones, That he remembers to have had a conversation with Mr. Muir in the coffee room at Glasgow, in the months of September or October last: that he saw Mr. Muir and another gentleman walking together: the gentleman having gone away, Mr. Muir came up to the witness, and said, that the person with whom he had been, was chairman of the society of the Friends of the People in Edinburgh: that the witness said to Mr. Muir, Do you not think this a wrong time for to insist for a reform in parliament, seeing what had happened in France? To which Mr. Muir answered, That he thought it a proper time, as the country enjoyed the blessings of peace; that there was no comparison betwixt this country and France: that in France, they had sought a revolution, and had brought it about, but that in Britain we wanted no revolution, but only a moderate reform.

James M'Gibbon

Depones, That he was a member of the society for Reform in Campsie: that he has seen Mr. Muir there, and that he did not recommend any books in particular, nor did he speak against the King, House of Lords, or House of Commons.

Robert Henry

Depones, That he is a member of the same society with the preceding witness: that Mr. Muir came into that society: that the witness was present during the whole time that he was there; but was not with him in the pri-

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several persons with whom I had spoken on the subject. I was then questioned when I had been cited as a witness; upon which I produced my summons, bearing date the 26th of August; I was again interrogated, if it was after the citation that I had the conversations referred to, and with whom I held these? To which I replied, that it was both before and after citation; but, as it was only a kind of general instruction, I could not recollect any particular person.

I was then ordered to withdraw; and, on being again called into court, was ordered to prison for three weeks.

This sentence not a little surprised me, as I was totally at a loss to guess the cause, not having been conscious of any wrong. Indeed the whole error (if it may be so called) was the effect of confusion and mistake, which were natural enough, considering my utter ignorance of law proceedings, and that I never before had been examined as a witness in a court of justice.

I do not mean to reflect on the Court, but to justify myself from the charge of prevarication, or of concealing the truth, which I had no idea of committing. On the contrary, it appears to me that I was to blame only for an over-anxiety to tell the whole truth in terms of my oath; for had I answered the first question in the negative (which I was entitled to do, as no person had put words in my mouth), I would not have had the mortification of being imprisoned.

Conscious of the purity of my intentions, I submit my case to the public; and, leaving it with them to judge with candour, I have only further to observe, that I grieve not so much on account of my confinement, of the injury it may do me in business, or my reputation, as I am sorry that, from my being rejected, Mr. Muir may be the greater sufferer of the two, as he was prevented from having the benefit of my evidence, which would have tended highly to his exculpation of the charges against him.

Edinburgh Tolbooth, Sept. 3, 1793. JOHN RUSSEL.

vate company; and that he did not hear the panel speak unconstitutionally, but heard him recommend peaceable and orderly measures.

The *Lord Advocate* said, it was unnecessary for Mr. Muir to bring so many witnesses to prove the same thing.

Mr. Muir replied, that he intended to bring witnesses from every part of the country where he had attended societies for reform, that he might clearly prove his innocency; that he had only a few more witnesses to adduce, and then he would close his evidence.

William Orr

Deponed, That Mr. Muir and colonel Dalrymple, came to Paisley: that in the company of the witness they visited, and addressed the different societies of the Friends of the People there: that Mr. Muir, in his speeches, inculcated a firm attachment to the king and constitution: that he recommended peace and regularity, and reprobated riot and sedition: that he exhorted the people to be steadfast to the constitution, and to endeavour to obtain their object, by every legal and constitutional means. The witness never saw Mr. Muir but that night: that after having gone through the different societies, Mr. Muir, colonel Dalrymple, and the witness went to Sinclair's inn, in Paisley: that in the course of private conversation, he heard Mr. Muir say nothing against the king and constitution, but that he heard him say, that the king was the best of princes.

James Craig

Depones, That in the societies of the Friends of the People in Paisley, he heard Mr. Muir declare, that the constitution was a good constitution, and that the king was the friend and the father of his people.

James Richardson

Deponed, That he is a member of the same society of the Friends of the People in London, of which Mr. Grey, M. P. is a member; that he is not a member of any society of the Friends of the People in Scotland, but that he was present at a meeting of the Friends of the People in Glasgow, when he heard Mr. Muir exhort the people to keep by the constitution, and that if any of them were against it, they should be expelled; that in a masterly manner he exposed the absurd idea of liberty and equality if it implied division of property, and that he said such a system was totally impracticable; and he used every argument to excite the people to keep to the old constitution.

Mr. *Muir* now declared, That he had finished the proof in exculpation: that it was in his power to adduce many more witnesses, but that he deemed it totally unnecessary.

The Lord Advocate.—Gentlemen of the Jury; It is my duty now to require your most attentive, serious, and deliberate consideration of what you have heard. The moment is come, when the truth or falsehood of what is laid to the charge of the panel at the bar, is to be ascertained. He is a man who, as I shall afterwards show you, has been, under the specious pretext of of a reform, sowing the seeds of discontent and sedition:—He appears here, before you, after being a fugitive from his country; and it is now that by your verdict,—a verdict which is uncontrollable, and from which there is no appeal,—his guilt must be established, or the imputation thrown out against him completely wiped away. This is a moment which I have long anxiously looked for, and I declare, that in the range of my official capacity, among the numerous list of offenders whom I have brought to this bar, if there has been any one whose actions particularly pointed him out for prosecution, whose conduct appeared the most criminal, who has betrayed the greatest appearance of guilt, this is the man:—he in every thing betrays a most decided spirit against the constitution, and all under the veil of parliamentary reform.

We all know the pernicious effects of the seditious writings and conduct which have lately appeared in this country; and all of those persons who have had the courage to come and stand a trial at this bar, have met with the same fate;—they have all been found guilty. And I trust, that as the evidence has clearly unfolded the diabolical and mischievous conduct of this person, he will receive a similar verdict. Who could have conceived, that a man who has received a liberal education, who has practised as an advocate at this bar,* should be found on every occasion, among villagers and manufacturers, poor and ignorant, for the purpose of sowing among them sedition and discontent?

The charges exhibited against the panel divide themselves into three distinct heads, which however all center in the general charge

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* Mr. Muir had, at the time of his trial, been expelled from their society, by the Faculty of Advocates, as will appear by the following extracts from their records, to which, by the kindness of the present dean, M. Ross, esq. I have had access:—

"*Edinburgh*, 2nd *March*, 1793.

"The Dean present;—The dean [the hon. Henry Erskine] represented to the Faculty, that one of their number had a sentence of fugitation and outlawry pronounced against him, by the court of justiciary, for not obeying a citation from that court; he wished to know, how far it was proper to continue a person of that description upon the roll of the faculty of advocates: after some short conversation upon the subject, it was moved and agreed to, that a meeting of the faculty should be held on Wednesday next, for taking this matter under consideration, and therefore the clerk was ordered to issue circular letters requesting

of exciting sedition and discontent by various steps of conduct.

First, He has circulated Paine's Rights of Man, a book which one of his witnesses says he declared to be dangerous to weak minds;—yet has he wilfully circulated this book, with an obstinacy and pertinacity which plainly indicated that his wish and intention was, to overturn our happy constitution.

Secondly, He has been always found making seditious speeches and harangues among knots of ignorant labourers and poor manufacturers, who, I am entitled to say, had it not been for him, would have remained peaceable and contented, and never thought of that incendiary Paine, nor of forming meetings, till he came, like the dæmon of sedition, recommending that club government, which in another country has produced so much anarchy and confusion, and which no well established government could allow.

Thirdly, He has been in a meeting, calling themselves delegates for obtaining a parliamentary reform.—Gentlemen, we all remember the transactions of last winter; it was then that sedition raised its hydra head, which the spirit of this country crushed, and since that day has held in detestation: it was then that good men felt and trembled; and though some late circumstances may have given cause to suspect that discord is still endeavoured to be excited, I have not a doubt that you will, by your verdict this day, show that you still entertain the same abhorrence of these practices. There, in that convention,—I shall call it by no other name,—he almost alone was found the supporter and defender of a paper highly seditious, if not treasonable, which came from a society in our sister kingdom, styling themselves United Irishmen, and which even in that convention was considered as dangerous; yet this person was the ringleader to produce, to read, and approve it, and who insisted that it should be received and answered.

These three charges, then, gentlemen, which unite themselves in one,—that of exciting discontent, nay almost rebellion against the government, that most dangerous kind of sedition, which, according to judge Blackstone, is next to high treason,—have been brought with deliberation; and it is now my duty to show you, have been established by the evidence.

In one thing I agree with the person at the bar,—THAT THIS TRIAL IS OF CONSEQUENCE TO POSTERITY;—I grant that it is; but whether as it strikes him, you are this day to judge. It has been my wish to obtain, in this case, the verdict of such a respectable jury as I now see. Gentlemen, you are to determine, whether sedition be a crime of such a detestable nature as I represent it; to crush it, I bring forward the arm of justice, which by the verdict you are to give, it is in your power to invigorate or to palsy in a moment. You will consider the conduct of the panel, and then say whether it is such as in your minds, ought to be passed over.

Gentlemen, as the charges are threefold, the witnesses must also be of three kinds. I shall speak of each in their order; and I must say, that if ever a strong body of evidence appeared in a difficult case, if ever there was a respectable set of witnesses whose testimony stands on the basis of truth, they are to be seen here; and in place of being contradicted by his evidence, they are completely corroborated by them.

Now, gentlemen, as to the first charge, that of making seditious speeches and harangues, and encouraging improper meetings, we find him in different parts of the country, exciting among the people a spirit of disaffection to the lawful government. There has he been, recommending books to enlighten their minds! a measure in which, however, he has been very unsuccessful, if we may take Weddel, the learned vice-president of the Kirkintilloch Society, as an example of its effects. The evidence I chiefly rest upon here, is Johnstone and Freeland, particularly Johnstone, and no evidence can be more distinct, connected, and clear. He and Freeland agree that the panel spoke of the success of the French arms.—With what motive could he discourse on such a subject to weak, uninformed, illiterate people, but to fulfil his seditious intentions? He talked of the weight of taxes. Gentlemen, we may see these burthens lightened; but if this gentleman's mode of doing it were to go on, what sort of relief we should have by the diminution of our taxes, and the payment of our debt, are topics on which you will judge as you ought to do. He said, that their taxes would be less if they were more equally represented; and that from the flourishing state of France, they could not bring their goods to market so cheap as Frenchmen. What could possibly be more calculated to produce discontent and sedition? Had such societies previously existed, the case would have been different; but he appears as the ringleader; he was there on the Tuesday preceding, conversing about it; he came to the meeting and harangued them; he adjourned with them afterwards to Wallace's. Can any evidence be more connected or more clear that he was the main instrument?

The second charge is the circulating seditio-

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the attendance of the members on that day, at the rising of the court."

"6th *March*, 1793.

"The Dean present;—The Faculty having met this day, according to their appointment, Saturday last, they took into consideration a sentence of fugitation of the high court of justiciary pronounced against Mr. Thomas Muir, advocate, for not appearing to stand trial on an indictment raised against him by the lord advocate of Scotland, for seditious practices; they *unanimously* order the name of the said Mr. Thomas Muir, to be expunged from the list of the Faculty: which was accordingly done in their presence.

ous books, containing the passages libelled in the indictment, which you may read. Freeland is again an evidence here; and I must observe that it appears to be doubtful, whether he told all he knew; from his face, he plainly prevaricated; and when closely questioned, the sweat broke upon it. He told you the story of getting Paine's book out of Muir's pocket.—I may here observe that such a mode of circulating a book, is that which a man in his situation will naturally adopt; he will not go on openly, but privately, and under various pretexts; by his fruits must you know him; you must compare his actions with his professions and then judge.

We have evidence of his recommending, and buying the Paisley Declaration and other books, which go to prove he is tainted from head to foot, and is as unworthy to live under the protection of the law as the meanest felon.

The next witness I shall speak of is Anne Fisher; and though the panel, by an expression which he made use of has endeavoured to prejudice you against her, I dare say, gentlemen, you will agree with me, that her evidence is correct, well-founded, stands on the basis of truth, and is corroborated by the evidence of others. But what was the conduct of the panel? The only thing indeed which he could do,—an endeavour to shake her testimony by an illiberal and unfounded insinuation, that we procured our information only from domestics.

To what then amounts her testimony, which stands beyond the possibility of a doubt?—That she was sent repeatedly from her master's house, the panel's father, who I understand is a respectable man;—far be it from me to attach any criminality to him; the panel has the miserable reflection that the distresses which have embittered the lives of his parents have been brought on by himself;—that she was repeatedly sent to purchase Paine's book and other works for country people who came into the shop, who, by this man's persuasion, must out with their miserable sixpence, to purchase Paine's Rights of Man; and that he used constantly to be reading seditious publications in the back shop;—it was there, in that cathedral of sedition, he sat like a spider, weaving his filthy web to ensnare the unwary.

The witness specifies the people for whom she procured Paine's book. One of the persons she condescends upon is the uncle of the unfortunate wretch at the bar, John Muir the hatter; but I declined bringing the uncle in as an evidence against his nephew. The other persons whom she mentions, are Wilson the barber, and Barclay, the Elder. Wilson corroborates the evidence of Anne Fisher, when he depones that he was advised to keep a copy of Paine in his shop, to enlighten his customers minds; for that it confuted Burke entirely—Mr. Burke, a man whose wonderful talents and genius have lately been so much exerted in the service of his country. Now, gentlemen, I have only to desire you to read the passages quoted from that book in the indictment, and if you are loyal to your king, if you love your country and are desirous to preserve it, you will return a verdict against this man, who has dared to recommend that wretched outcast and his writings—works which I never read till my official duty compelled me to it, and of which I need not give you my opinion, since the determinations of courts of law, and the unanimous opinion of the country, have marked the detestation in which they are held. [His lordship here read some of the passages inserted in the indictment.]

What avails then, gentlemen, all this evidence of attachment to the king and constitution, when he unequivocally approves sentiments such as these? We are told, indeed, by one of his witnesses, that he advised him not to sell Paine; but unfortunately the answer given to the question put to him upon his cross-examination, proves that they were not his real sentiments, but for fear of danger, as the book began to be taken notice of.

It appears from the evidence of the girl, Fisher, that even the poor organist could not pass the house of this demon of mischief, but he must be stopped and desired to play *ça ira* —a tune which is made use of in that unhappy country, France, as a signal for blood and carnage. He used to say too, that if every man had a vote, he would be member for Calder, and members would have thirty or forty shillings a day. All these circumstances go to prove incontestibly, that France and French principles were continualy in his view, and that he aimed at the destruction of the present government; with respect to which, however, I hope his prophecies will be as false, as they have already been in regard to the success of the French. It may be said, that the evidence of this girl Fisher is, in a trifling instance, contradicted by the elder, Barclay; but you should recollect the salvo * which that old gentleman chose to introduce when he took the oath:—That did not look well.

I now come to the third charge, which relates to Mr. Muir's conduct in the convention. It is here incontestibly proved, that he read, approved, and defended the Irish address. Will you approve this paper? Will you disregard this convincing proof of his guilt? Be his studies ever so great, be his views ever so extensive, will you permit him arrogantly to set up his seditious opinions, in opposition to the government and constitution? His conduct in some instances would almost appear to be marked with insanity were we not finding him the determined ringleader in an uniform scheme of sedition.

* When Mr. Barclay made oath, he added to the clause, "to tell the truth so far as you know," these words "and can recollect." *Orig. Edit.*

This, gentlemen, finishes my remarks upon the evidence — upon the evidence which I think is invincible; but there are two topics on which I must beg to make some observations.

Mr. Muir told us that he was carried out of this country by business of importance, that he was detained in France, and that he always wished to have a trial. I could have no objections to his proving this; it would have argued some degree of honour. But his professions are false and confuted. He left this country under an impression of guilt, and lately returned, the pest of Scotland, with the same intentions as before.

I was never more surprised at any thing than at the evidence of Skirving, when he said that the panel was sent to France by the persons styling themselves the Friends of the People to save the life of the king! Never was I more astonished than at the impudence of this. Did the witness know, or recollect, that he was then almost accusing him of high treason, by making him a missionary from a society in this country to France?—a circumstance which greatly confirms his guilt. But why was he interested in this event? It was an event, as his witnesses tells you, that would hurt the common cause—what cause? THEIR INTENTION OF EFFECTING A CHANGE IN THE GOVERNMENT OF THIS COUNTRY.

He says that he always wished to have a trial; let us see how this corresponds with facts. When the trial was coming on I postponed it longer than I ought to have done, to give him every chance; and I inserted it in the papers, which might perhaps reach him roaming in some part of the world.

The ship master's receipt bears date the 16th May. What became of him from that date till the 31st of July when he was apprehended? He informed nobody of his intention of returning. How unlucky, how wonderful that not one solitary letter was wafted over by the winds and waves to the Edinburgh Gazetteer, or the Caledonian Chronicle, to give notice of what he says was his earnest wish!—The reverse in fact appears to have been the case. By the letter of J. Muir, his father, we find him in Ireland, doing we know not what, except what we learn from the diploma of the worthy society of United Irishmen. He is at last apprehended, returning into this country with all the insignia of sedition about him.

I have but one remark more. You may in some degree judge of a man by the company he keeps.—Among Mr. Muir's papers, we find a letter,—here in my hand,—addressed to the rev. T. Fyshe Palmer,* a man who is indicted to stand trial at Perth, in the course of a few days, and whom most of you must know. The impression of the seal too is worth remarking, it is the cap of liberty on a spear, and under it is the motto *çà ira*.

* See his trial for sedition, in this volume, *infrà*.

I beg your attention gentlemen to the quotation I shall now read from a French author* in treating of the British constitution.

[The passage his lordship read, was from De Lolme on the Constitution of England, from the middle of p. 534 to the end.]

I hope, gentlemen, this case will be viewed by you in such a light as that you will protect your king from the attacks of his enemies, that you will protect this temple of freedom from the attempts of the factious, but particularly against that man at the bar, who has been sowing sedition with so liberal a hand. You may now, however, seize him in his career, and by your verdict do justice to your country and honour to yourselves.

Mr. *Muir*.—Gentlemen of the Jury; I rise, in my own defence.——All that malice could devise, all that slander could circulate, has been directed against me. I speak with joy and with triumph. After an investigation into my public transactions, and into my private conduct, the most minute and the most unexampled which ever occurred in this country, my moral character stands secure and unimpeached. With the anonymous, the worthless, and the paid assassins of public reputation, I disdained to enter the lists. To this day I looked forward with expectation; when before you, in the presence of Scotland, I should not merely remove the suspicion of guilt, but should demonstrate my innocence. I will not imitate the example of the public prosecutor, who has finished his pleading. Sounding and unsubstantial declamation is unsuitable for you, and it is unworthy of me. This is not an hour to temporize. The eyes of this country are fixed upon us both. The records of this trial will pass down to posterity. When our ashes shall be scattered by the winds of heaven, the impartial voice of future times will rejudge your verdict. Let faction rage:—let the spirit of party, in the present hour, proudly domineer:—the illusion will soon vanish away. In solitude the power of recollection will assume its influence; and then it will be material to you, whether or not you have acted uprightly, or sinned against your own eternal conscience, in my acquittal, or in my condemnation!

Before I enter into a particular vindication of myself, let me take notice of two circumstances, strongly insisted upon by the public prosecutor, which have little relation to the general nature of the evidence which has been adduced.—Long, indeed, has he harangued upon them; and has concluded his speech by exhibiting them in every shape which his imagination could invent. He maintains, that a consciousness of guilt obliged me to leave this country after an infor-

* De Lolme was a Genevese.

mation had been filed against me, and after I had been examined by a magistrate. I will admit the fact of my departure.—In these days—in these circumstances—is that to be ascribed to conscious guilt alone? If the whole strength of arbitrary power is extended against an individual, is there merit in exposing himself as a sacrifice which cannot be useful to the country, and which may only present posterity with a new addition to the immense catalogue of the victims of despotism? If two motives had only existed to which you could assign my departure, you are bound to ascribe it to the most charitable. —But what were the circumstances attending my departure? Did they bear any resemblance of a flight? Did I not publicly announce it the preceding evening in a numerous meeting of citizens? Did I not cause it to be published in a public paper? Did I affect the garb and disguise of concealment? In London, did I remain in obscurity? Did I not appear in a distinguished society, the society of the Friends of the People? And did not that society publish afterwards a resolution, announcing in its preamble my presence among them?

But I went immediately afterwards to France. Mr. Skirving, who was examined with regard to a letter he received from me before my departure from London, has said, in his evidence (and his words I have accurately in my notes) that I proposed to go to Paris, as it was the advice "of Some Friends," and might be of some service in mitigating the fate of the late king.

The words of Mr. Skirving, "Some Friends," have been curiously represented.—It is stated, that these "some friends," must have been the members of that truly respectable society; and it is boldly argued, that I went to France as a missionary from that body.—Nothing can be more ridiculous—Nothing can be more injurious.—Mr. Skirving never said so!—No person can, or dare say, that I ever went as a missionary, delegated from individuals, or by societies, to any foreign power. Building then upon this unsubstantial basis of words, never uttered in evidence by Mr. Skirving, nor which ever could possibly be uttered, I am accused of a species of high treason, in corresponding with a foreign power without any legal authority from home. The charge of corresponding with foreign power is equally ridiculous with the misrepresentation upon which it is founded; but let it be considered as serious, I dare the proof.

I challenge the prosecutor to adduce the smallest vestige of evidence.

Yes; I will admit, I wrote to Mr. Skirving my intention of going to France; nor will I deny the motive. I saw, in the execution of the late king, a specious pretext to plunge the country in war, and to extend the effusion of human blood to every corner of the world! I may have erred. I may have acted from enthusiasm; but it was enthusiasm in the cause of man. If, at the period when it was free to every person to publish their sentiments upon that awful question, I wished likewise to publish mine, can that be imputed to me as a crime? Can the intention of pleading the cause of mercy, of individual and of general humanity, be construed into guilt? If it can, I am then guilty. Has not the prosecutor lamented that disastrous event? And will he accuse a man who wished to prevent it?—who, with many friends to humanity, of every nation, and of every party, in private, in public, in conversation, and from the press, exerted their abilities to ward off an event which they foresaw was to introduce years of blood and sorrow? But allow, that at first glance, my departure from Scotland, my journey to Paris, afforded a presumption of guilt, that presumption is obviated by my return.

The prosecutor has boasted of his humanity, in granting me the delay of a few weeks, by postponing my trial, in order that I might return from Paris.—But was he ignorant that hostilities at that time were commencing—that the communication was closed—that it was tedious and difficult to procure passports? Of that difficulty no person here can possibly have any doubt.

Do not all my private letters, which have this day been read, prove my uneasiness upon account of the delay, and my anxiety to return? But, at the period when I procured my passport, the flames of war were blazing over most of Europe—I knew only two ways by which I could possibly return home. The first, by the way of Hamburgh; the second by the longer, but the more certain circuit of America.—I adopted the latter, as more safe, and less liable to interruption.—I left Paris. —I went down to the port of Havre-de-Grace. I found a vessel which was to sail for New York.—The receipt found in my pocket-book, when I was stopped upon my landing in Scotland, from the master of that vessel for the payment of my passage, proves, that I had actually taken my passage in that ship. That vessel, in taking her freight, and by an embargo, was detained for near three months.—In this interval, another American ship, the Hope, of Baltimore, arrived. The captain was to touch in at Belfast, in Ireland, for part of his cargo, on his return to America.—This I considered to be a fortunate accident.—I immediately embraced this opportunity of returning by the way of Ireland to my country, not to implore favour, not to ask protection, but to DEMAND JUSTICE. To pass from France, to any of the dominions of Britain, I had no passport—my passport was to America. I braved every danger. After a short passage I was landed in Ireland. There I remained no longer than nine days, I concealed not my name. I appeared publicly, and in the places of most public resort. To all I announced my situation and intention.

The prosecutor has either designedly or ignorantly, laid hold of the circumstance of the indorsation of the municipal officers of Havre-de-Grace, upon my passport. The department of Paris granted me a passport in the end of the month of April, and I arrived at Havre on the 3d or 4th of May. The first step which a stranger is obliged to take, upon arriving at the place of his destination in France, is to proceed to the municipality, to show to them the passport from whence he came, to have it revised and attested by them, in order to enjoy security within their jurisdiction. The indorsation, as I have stated, of my Parisian passport, by the municipal officers at Havre, is of the 3d or 4th of May last. From this circumstance, the lord advocate infers, that I must immediately have found a vessel to carry me home. He makes no allowance for the state of the two nations; he makes no allowance for the difficulties which neutral vessels have in passing betwixt both; and he knows nothing of the embargoes which these vessels must constantly experience in the different belligerent ports. Well, then, some time in the month of May I must have landed in Ireland! Public report has said, that insurrections have been in that country. The prosecutor has cried out, that I was the dæmon of sedition! and he insinuates, that there is a probability that I was the cause of these insurrections. I smile at the accusation, which he himself in his own mind must deride. It could have been easy for me, by the testimonies of my friends in Ireland, whom I love, and whom I honour, to prove how I passed my time. But for me to dwell upon this is unnecessary. You, of the jury, must have experienced the same emotions, and at present indulge the same feelings as I do.

From Ireland, the prosecutor says, I attempted to land in Scotland in a clandestine manner; and so says his composition, the indictment.

In the list of witnesses adduced against me, I saw the names of Carmichael, the person who first recognized me at my landing at Fortpatrick, and of Mr. Ross, the magistrate at Stranaer, before whom I first appeared. The lord advocate charges me with coming to Scotland in a clandestine manner. He serves upon me, in the list of witnesses, the only witnesses who could prove the fact; Carmichael, the custom-house officer, and Mr. Ross the magistrate, to whom I surrendered. I expected Carmichael and that gentleman would have been inclosed with the other witnesses of the crown. I would have adduced them as witnesses to prove, that so far from concealing myself, I announced myself publicly, and without disguise; so far from attempting evasion, my only anxiety was to put myself in the hands of the law, and under the protection of its magistrates. The conduct of the public prosecutor is in every respect uniform. He is guilty of another piece of disingenuity, by serving upon me in the list of the witnesses of the crown, the names of Carmichael and Ross. I could not entertain the least possible doubt, but that they were to be adduced. This was an art to prevent me citing them at my own instance. It has succeeded. I am deprived of their testimony. But why did not the prosecutor, at least, produce the declaration which I made before the magistrate at Stranraer? That delaration, freely and voluntarily emitted, would have proved, that I came into the country in no unbecoming manner.

Much of the invective of the prosecutor was founded upon my coming into this country in concealment. This circumstance, the indictment charges as an aggravation of the crime. Judge, then, gentlemen, of the rectitude of the prosecutor's conduct, when he declaims upon a fact which he shrinks from proving, and which by his art in serving the list of witnesses upon me, he has prevented me from confuting.

I trust, now, you will be convinced that no consciousness of guilt led me from Scotland; no improper motive carried me from England to France; and that no deep and secret intention induced me to return in disguise to my country. The object of that return was to demand justice, to wipe away the imputation of that crime with which I now stand charged. And what is that crime? Sedition.—Is there a term so vague and so undefined? so familiar to power, so familiar to corruption? All who ever dared to oppose arbitrary power, and who in the hour of danger came forward to save their country, have been branded by the epithet of seditious. The term is therefore no longer a term of opprobrium. In one age it has been applied to men rejected by society, whose names were honoured by after-times, and upon whose virtues, and upon whose sufferings, the succeeding age reared the majestic pillar of the constitution. I am then accused of sedition, and I ask you of the jury, to point out the corner of this land where sedition has existed. And tell me truly where the smallest vestige of this crime has appeared. Upon you the eyes of the people are now placed. Upon your consciences the oath of God is binding. Point out then to us where the shadow of sedition has been descried. Have the sacred rights of property been any where invaded? Has the blood of the citizens flowed by the hands of the Friends of the People? O! No.—But the prosecutor has talked of the danger the people of this country were in last winter! of deep-laid plots! and of tremendous conspiracies! and I am the man, whom he charges as the author of the whole, whom he represents similar in malignity to the dæmon of mischief! and whom he honours with the title of the "pest of Scotland!" Well, then, let it be supposed, that an attempt was formed to overthrow the constitution, to kindle the torch of civil war, to lead rapine and murder

along the land: where has the proof of this design been found? Has it been discovered in the meetings of the Friends of the People, who, conscious of the purity of their intentions, affected no concealment, assembled with doors open to all, and who hatched their hellish designs (if such they were) in no midnight cavern? Could in the crowds, that were admitted to attend the deliberations of these societies, be found no ruffian, who could at least give a bold and manly testimony against them, and against me? But to support the accusation, the walls of a private house must be invaded; domestic secrets must be explored, and the testimony of a miserable scullion girl and a hair-dresser, must be brought forward, with regard to words, spoken where suspicion the most vigilant must have been asleep,—under the guardianship of a paternal roof. And are these the witnesses, who are to prove against me this mighty crime, which, supposing them to have been honoured by my confidence, would have required the co-operation of thousands of bearded men in arms?

Gentlemen of the jury, Let us this night throw away vain pretext: let us act fairly and candidly. I smile at the charge of sedition. You yourselves are conscious that no sedition has existed in this country, and in your own minds you deride the accusation. I know for what I am brought to this bar, it is for having strenuously and actively engaged in the cause of parliamentary reform; for having exerted every effort, by constitutional measures, to procure an equal representation of the people, in the house of the people. Let not the prosecutor sculk in darkness: let him come manfully forward, and avow the cause which has impelled him to bring me here. I will give you little trouble: I will prevent the lassitude of the judges: I will save you, the jury, from the wretched mockery of a trial,—the sad necessity of condemning a man, when the cause of his condemnation must be concealed, and cannot be explained. Yes, I plead guilty. I openly, actively, and sincerely embarked in the cause of a parliamentary reform, in the vindication and in the restoration of the rights of the people. Nor will I blush to unfold to you my motives; they are supported by their own intrinsic strength, but they are likewise held up by the great and the venerable names of the living and of the dead. I contended for an equal representation of the people, in what I shall ever call the house of the people, because I considered it a measure essentially necessary to the salvation of the state, and to the stability of your boasted constitution. Wherein then consists the excellency of that time-tried fabric, cemented by the blood of your fathers, flowing from the field and from the scaffold? I will tell you: It consists in the due balance of its three impelling powers, King, Lords and Common; if one of these powers loses its vigour, the constitution in proportion loset its vigour; if one of these powers becomes only a shadow of what it ought to be, if it becomes merged and absorbed into either of the other two, your constitution then also becomes a shadow, and it is annihilated. And do you not know, and does all the world not know, that if any where the proud structure of the constitution has suffered the ravages of time or of corruption, it is in its popular branch? Is it not a fact indisputable, that the representation of the people is not such as it once was, and is not such, as I trust in God, one day it shall be? The man then who sounds the alarm, when he discovers the approach of danger, who summons all who may be concerned in its reparation, is surely no enemy to the country, no foe to the constitution, because he labours in its preservation and protection.*

Such were the motives of my conduct. If I am guilty, I have in my guilt many associates, men who now enjoy the repose of eternity, whom your fathers admired while living, and to whom you, their children, have erected statues. I have no time to run over all the venerable catalogue. But, is there a man ignorant of the illustrious Locke? And was not this sage in philosophy, this advanced champion in the cause of liberty, and of man; this friend to the British constitution, who wrote his Treatise on Government in its defence,—in defence of the last glorious revolution, by the desire of the prince, who was the leader of the men who planned it;—was not he an advocate for a reform in parliament, for a more equal representation of the commons in the House of Commons? Will you venture to tear the records of his fame, to stigmatize his memory, and to brand him with the epithet of seditious?

Let us rapidly proceed down to more modern times. Let us pass over in silence many illustrious names, whose memory with that of the constitution, will perish together. Let us come to your own days. Are ye ignorant of Blackstone;—the man who first collected the laws of his country, from the deformed chaos into which they had been thrown, who

* "And, as it is essential to the very being of parliament, that elections should be absolutely free, therefore all undue influences upon the electors are illegal, and strongly prohibited. For Mr. Locke (on Gov. p. 2. § 222.) ranks it among those breaches of trust in the executive magistrate, which, according to his notions, amount to a dissolution of the government 'if he employs the force, treasure, and offices of the society to corrupt the representatives, or openly to pre-engage the electors, and prescribe what manner of persons shall be chosen. For thus to regulate candidates and electors, and new-model the ways of election, what is it, says he, but to cut up the government by the roots, and poison the very fountain of public security?'" —Blackstone, B. 1. ch. 2. p. 178.—*Orig. Ed.*

arranged them with elegancy, and who adorned them with every flower which the classic field could produce? Are not the volumes of this reverend judge in the hands of all? Should they not be familiar, at least to those who are called to decide concerning the constitution? And has not Blackstone, not with the levity of ill-pondered words, not in the private hour of relaxation, not in the heat of popular debate, but in the calmness and solitude of study, maintained the same propositions which I maintain, been guilty of the same sedition of which I am guilty, when he pronounced that the constitution was imperfect, in its popular branch, and if any where alteration was necessary, it was there to be desired? I entreat you to listen. I will read you, what this best expounder of the constitution has said. Let the words be engraved on the tablet of your hearts.

"And this constitution of suffrages, is framed upon a wiser principle with us, than either of the methods of voting, by centuries or by tribes, among the Romans. In the method by centuries, instituted by Servius Tullius, it was principally property, and not numbers that turned the scale: in the method by tribes, gradually introduced by the tribunes of the people, numbers only were regarded, and property was entirely overlooked. Hence the laws passed by the former method, had usually too great a tendency to aggrandize the patricians or rich nobles; and those by the latter, had too much of a levelling principle. Our constitution steers between the two extremes. Only such are entirely excluded, as can have no will of their own: there is hardly a free agent to be found, who is not entitled to a vote in some place or other in the kingdom. Nor is comparative wealth or property, entirely disregarded in elections; for though the richest man has only one vote at one place, yet, if his property be at all diffused, he has probably a right to vote at more places than one, and therefore has many representatives. This is the spirit of our constitution: not that I assert it is in fact, quite so perfect as I have here endeavoured to describe it; for, if any alteration might be wished or suggested, in the present frame of parliament, it should be in favour of a more complete representation of the people."*

If Blackstone, then, wished for a more equal representation of the people, if he dared to publish, and to enforce his wish; and I have merely done the same, where is the difference in our guilt? But there is a difference, and that difference is great. A learned professor of the laws of England, in the University of Oxford, a grave writer, in the solitude of his retirement, a solemn judge, upon the tribunal of England, proclaiming that a reform in the representation of the people was just, and essential to the true spirit of the constitution; how superlatively criminal must his conduct be, when compared with mine!

But vengeance ceases at the verge of the grave. There factions and parties rage in vain. If I have been guilty of an atrocious crime, I shall not demand the protection of the dead, I shall not wander among the tombs, and cry for the support and the assistance of those who cannot hear me, but I shall loudly demand the protection of the living, of men high in rank, exalted in power, and who enjoy the confidence of their king. Can it ever be forgotten, that in the year 1782, Mr. Pitt was stained with the same guilt? Did not he preach up the necessity of a reform in the representation of the people? Did not he advise the people to form societies; and did not he countenance these societies, by his presence? I appeal to the resolutions which he subscribed, in the Thatched House Tavern. I attest the motions which he made for Reform in the House of Commons. Beware how you condemn me. Beware how you brand me with the opprobrium of being seditious. At the same time you condemn the confidential minister of the king. Nay more, Sir, in bringing this charge against me, you accuse your sovereign; for can it be supposed, that he would permit a man to enjoy his confidence, who in the year 1782, by being a reformer, as I am in the year 1793, wished to precipitate this country into anarchy, desolation, and into all the horrors which you have described.

But if the attempt to procure a reform in parliament be criminal, your accusation must extend far and wide. It must implicate the ministers of the crown, and the lowest subjects. Have you forgotten that in the year 1782, the duke of Richmond, the present *commander of the forces**, was a flaming advocate for the universal right of suffrage? Do you not know, that he presided in societies, and, like Mr. Pitt, advised a universal formation of such societies all over the kingdom? Have you never read his famous letter to colonel Sharman; in which his principles, his testimony, to a full and complete representation of the people, are indelibly recorded? Is guilt the passing unsubstantial fashion of the day? Does it vary according to times, and to seasons, and to circumstances? Shall what was patriotism in 1782, be criminal in 1793? You have honoured me this night, by the title of the *pest of Scotland*. And if the same offences merit the same appellations, you must likewise liberally bestow this epithet upon the first lord of the treasury, and upon the *commander of the forces*. But what term of super-eminent distinction will not you, the public prosecutor; you the lord advocate

* Bl. Comm. book 1. c. ii. vol. i. p. 171, 172.

* The Duke of Richmond was not commander of the forces, but master general of the ordnance.

of Scotland, appropriate to yourself? Were not you, not many months ago, likewise a reformer? Did not you contend and act for a more equal representation of the people in the House of Commons? Were not you one of those men, who, for that purpose, assembled lately in this city, in what they called a convention, and assumed to themselves the title of delegates from the counties? Were not you, yourself, employed in framing a bill for the extension of the elective franchise? Every charge in your indictment against me, recoils upon yourself; in accusing me, you charge yourself with sedition. If it was lawful for you and your friends to meet in societies, and in conventions, for the purpose of a reform in parliament, unless the standard of guilt shrinks and extends as caprice or power may order, it surely must have been permitted to me and my friends also to meet, and to act on the same principle.

But I advance in this track no farther; although my assertions and my arguments are just, yet the subject of them is so connected with ridicule, as to render them not so seeming in this solemn trial.

Gentlemen of the Jury; If the real cause of my standing as a panel at your bar, is for having actively engaged in the cause of a parliamentary reform, I plead guilty. My conscience, however, will whisper consolation to me under my condemnation. I engaged in that cause, for I thought the measure was to save the country; that a more equal representation would dry up the sources of corruption, would diminish our taxes, and stop the effusion of our blood. That such were my motives, appears from every part of the evidence against me. The public prosecutor shrunk from the examination, even of the testimony of his own witnesses. He averted his eyes from the proof, in order to indulge himself in vain declamation and unbecoming invective. I will not, however, imitate his conduct. I will examine minutely every branch of the proof which he has adduced against me; and you will be convinced that after every word and action of mine has been scrutinized; after even the levity of the unguarded hour has been explored, and while instructed spies have watched every look, and marked every word, not the vestige of sedition can be discovered.

The first charge against me is, That at meetings of the people which I myself had convocated, I made seditious harangues; vilified the king and constitution; represented the monarchical part of our government as cumbersome and expensive; instituted a comparison betwixt our system and that of France, and did every thing to inflame the minds of the people to insurrection and rebellion. It is particularly alleged that I was guilty of these crimes at two meetings, the one at Campsie, and the other at Kirkintilloch.

To prove this charge, Alexander Johnstone is adduced. You will remember, that I offered to prove that this witness had expressed himself in the most rancorous terms against me; that he would do all in his power to get me hanged. By respectable witnesses, I could easily have supported this averment; but I was not allowed by the Court, as I could not specify the particular cause which had excited the malice of a man I did not know, and whom I do not remember to have ever seen. But what does even Johnstone say? I will read you from my notes the whole of his evidence. Correct me if I have erred in taking down any thing differently from what has been stated. I believe that my notes are accurate, but mistakes are not impossible.

[Here Mr. Muir read over the whole of the evidence.]

What does this witness then say? He says, that I stated, in the meeting at Campsie, the disadvantages in the representation, from boroughs being rotten, and from others having no vote, the population of England and Scotland, the small number of electors in both, and that the people were not fully represented. And is this sedition? Is not the fact notoriously true? Has it not been resounded innumerable times within the walls of the House of Commons itself? Has not the table of that House been covered with petitions, expressing it in language infinitely stronger than mine? If to state truth be sedition, why did our legislature slumber? Why slumbered the law? and why was not public vengeance armed with the sword of justice, when this crime dared to pollute the sanctuary of the legislature, by its appearance within it?

Johnstone depones, that I said, If a man gave 20,000*l.* for a seat in parliament, he behoved to derive some interest from it. Is not the fact true? Do not we daily know of sums of money being given for seats in that House, and can there be a conclusion in Euclid more certain than the inference which I draw from the fact? It may be said, that the House may be pure and uncorrupted, even although such sums of money are given for admission into it; that men may do so in order to serve their country, or to display their own abilities. Grant all this; but have we not seen much greater sums thrown away at contested elections, by men who never opened their mouths within the walls of St. Stephen's Chapel; whose patriotism never shone forth; and whose abilities were never discovered? The witness depones, that I said the duke of Richmond had been bribed into silence, by 20 or 30,000*l.* And supposing I had said so, that this was a salutary opiate, which calmed and cooled the fever of his brain, and probably saved him the mortification of standing his trial, also, for the crime of sedition; what has this to do with the present matter? It is not the duke of Richmond, but it is the king himself, that I am accused of vilifying. This assertion of Johnstone's is indeed too ludicrous for serious argument.

Gentlemen, before I proceed farther, let me make one remark. I am to be tried by the law of Scotland; and, by that law, two witnesses are necessary to prove a crime.—This is a rule full of humanity; but, at the same time, by cutting off proof, it may, and has upon some occasions defeated the ends of public justice. If, however, the concurrence of two witnesses were to be rigorously insisted upon, it must be in a case similar to mine, where their testimony is to go to words, *volantia verba*, neither engraved in marble, nor recorded in brass. You know the infinite variety of circumstances depending upon the speaker, the occasion, the manner, the person to whom they were uttered, and his situation; by which, the meaning of the same words can be diversified and modified, tortured into guilt, and explained into innocence. By the law of England, which is likewise the same with our's in the case of treason, the bare uttering of words, without any overt act, cannot be admitted as evidence to prove the crime.

Johnstone depones, that I compared our constitution with the French, and said, that their arms would be successful; that their representation was more equal; two-thirds of their debt paid; and that their manufacturers, in the competition with ours, would have the advantage. Who ever heard before, that it was unlawful to compare the British constitution with that of another country? If the British constitution is the boast of ages, the pride and the glory of the world, can it suffer by any comparison? On the contrary, will not its splendour brighten by the foil? But does Johnstone say, that I gave the superiority to the French constitution over the British? No.—Does he assert, that I exhorted the meeting to reject the British constitution, to adopt the French, and to adopt the French as the better model? No; not a word. What then says he? That I merely compared the two together. Is this sedition? Alas! we are all seditious. Is there a man here, or in this country, who has not, in his own mind, and who has not in words, made a similar comparison?

Johnstone next observes, That I mentioned, that two thirds of the French national debt was already paid; that their taxes were less, and that I ascribed this to the people being more equally represented in their legislature. I may have said so, or I may not have said so. My remembrance does not carry me. Whether the fact was true, at that time, that I spoke in the meeting, of two-thirds of their national debt being paid, and of their taxes being less, I know not. Certain it is, before and since, I have often heard it to be so, in word and in writing; but I will say this to you, and I will say it to all Scotland, that an equal representation of the people is the most direct and salutary method to diminish and pay off the national debt; to alleviate the weight of taxes, and to remove the clogs of industry. Nothing can be truer than the inference which Johnstone says I drew, that a people equally industrious must have the advantage over another, who pay greater taxes; and who groan under the burthen of a greater debt. If I were connected with this last nation, I certainly would advise them to take every constitutional step to procure a diminution of their debt and of their taxes. And what does Mr. Johnstone say? That I advised the society to petition parliament; and that the sole intention of these societies was, to procure a more equal representation and a shorter duration of parliaments. Do you say then, that the object of these societies is unconstitutional? Or do you say, that these societies, in the means which I advised them to make use of in order to accomplish that object, were to act unconstitutionally? You can do neither. Under the free government of Britain, every man has a right to look after those whom he is supposed to delegate to the House of Commons, to be the arbiters of his liberty, his fortune, his life. He has a right to come and state to them his wrongs and his apprehensions; and the mode which the constitution has pointed out is by petition.

Johnstone depones, that I advised the people to consult together, to communicate and diffuse their knowledge: the advice was a good advice: and such an advice as I would give were I still in the same situation. What! is the time now come when the mind must be locked up; when fetters must be imposed upon the understanding; and when the people, the great mass of human beings, must be prohibited to receive information, and to communicate among themselves the information which they may have received! Miserable people!—Country to be deplored!—Ignorance is the source from which despotism flows. The remembrance of former liberties will make you only more wretched! Extinguish then (if possible) the light of heaven, and let us grope, and let us search for consolation, if it can be found, under the darkness which shall soon cover us. But the prospect before us is not so dismal.—We live, we act under the British constitution;—a constitution which, in its genuine principles, has for ages consecrated freedom. We live, and we remember the glorious revolution of 1688, which banished despotism, and placed the family of Hanover upon the throne. We remember the Bill of Rights; nor shall we forget one of its most sacred clauses, which declared, established, and sanctioned the unalienable claim of the citizen to petition parliament. Now, as members of the British constitution, acting under the Bill of Rights, how should our conduct be shaped? Do we complain of general grievances, such as an unequal representation of the people? It would be arrogance in a part to speak the language of the whole. Let those, then, who feel most sensibly the pressure of this general

grievance, not presume to complain for the nation, but consult the nation. And how are they then to consult the nation, but by bringing the people together in societies to deliberate and to resolve? Would you wish the people to act unadvisedly? Would you propose they should carry petitions to the doors of the House of Commons, without knowing the real signification of the import of these petitions? Let us apply to our political conduct a rule sure and unerring in private life.—Think, deliberate before you act. An unequal representation is a general grievance.—Before we seek to obtain its redress, let us inquire, in the first place, if it is generally felt; and in the second, if redress is generally wished for. In applying for a general remedy, let us first be convinced of the general disease. Without this, a few factious may presume to speak for the nation, may impose upon the weak, and may plunge the many into inextricable confusion and misery. The great proposition, then, which I maintained is, that the people should consult together; that they should form themselves into societies; for it is only by so doing that they can conduct themselves with wisdom, and hope for success.

The Bill of Rights declared the unalienable, imprescriptible right of the people to petition parliament, and if you condemn me for advising the people to petition with reflection, with united and general deliberation, for the redress of general grievances, ye tear the record of our liberties, and scatter the fragments where they never can be collected.

In advising, then, even according to Johnstone's evidence, the people to inform themselves, reciprocally to communicate their information, and then wisely and deliberately to petition parliament, you do not condemn me, but you trample upon their liberties, and you proscribe the constitution. If I declared, at the meeting of Campsie, that the people should adopt every mean to instruct themselves with regard to their political rights, I declare and I inculcate the same now before you, and before this great audience.

Hear farther what Mr. Johnstone says. I have his words accurately in my notes. I advised the society to get all the political pamphlets from a neighbouring bookseller.—The advice was a right advice. I did not list myself under the banners of faction. I combated neither for ministry nor for opposition, for the ins nor for the outs; I fought in the cause of truth, and how is that cause to be successful, but by general, complete, and impartial information of the different arguments advanced upon either side of the great question of parliamentary reform? Gentlemen, remember who the witness is, who brings forward this important truth in my favour. It is Alexander Johnstone, the first witness adduced by the prosecutor, against whom I objected on account of the expressions which he had used, indicating his intention to ruin me, which, by respectable witnesses, I offered instantly to prove, but which proof was not allowed by the Court. When this man speaks what is strongly in my favour, you cannot suspect him; nay, more, what he has said affords a clue to my conduct. Fond of reading myself, purchasing for information almost every new publication, was it not natural and just for me to recommend a similar line of conduct to men, who, from their union, were enabled to defray the expense? If I had been the tool of party and of factions; if truth had not been my object, I would have said to this society, "purchase not the books which are written against parliamentary reform; they are merely the productions of pensioned hirelings; but read every treatise written in its defence.—These are the productions of enlighted, and of philanthropic men, and they are stamped by the signature of genius." You will remember what the witness has said upon the interrogatory of the solicitor-general, relative to what I mentioned concerning the King, Lords, and Commons. What was the reply of the witness? It was this, that I said, the constitution ought to consist of King, Lords, and Commons. Is this vilifying the monarchy? Is this representing that part of the government as expensive and cumbersome, as the indictment sets forth? Is this inflaming the minds of the people, and exciting them to insurrection and rebellion?

This witness has likewise deponed to a remarkable fact. I will state you his words accurately: if I am in error, you will correct me from your notes. "In that meeting there was mention made of Paine's Rights of Man, but not by Mr. Muir. One man in the society, not in a public manner, but to his neighbour privately, said, that he had read Paine's Works." What was that to me? And supposing I had overheard this man use these words; could I be blamed for merely possessing the faculty of hearing? Does Johnstone say, that I participated in this private conversation? He says no such thing. Does he swear that I recommended Paine's Works, or introduced the mention of them in the meeting? No. How then is the other charge in the indictment supported by the testimony of this witness, of my advising the people to read seditious books, and circulating such among them?

Johnstone has told you, that most of those who composed this meeting were weavers, mostly young men from eighteen to twenty years of age. What is the inference which the lord advocate has deduced from this? I blush to mention it.—That people, in that situation, and at that time of life, have no right to interfere in public affairs! People in that situation!—What situation? Who compose the great mass of society? Who

support the state? Who contribute to its wealth? Who must fight in its defence? People at that period of life!—What period? When the heart is uncorrupted; when the soil is best prepared to receive good seed, and when the feelings of the mind can be most easily led over to the side of virtue and humanity. Because the majority of the members of that society might be weavers, they must be held up in derision! Because the majority of them might be young men, they must be censured for presuming to interest themselves in the happiness of that country in which they were to spend their future days, and whose constitution was to operate on their future lives! But you have seen several of the members of that society, and those too adduced by the prosecutor (Mr. Johnstone in the number), and did you think them so young, so frivolous, and so ill-taught as he represented? This is a matter which regards you, as you were the witnesses, and you must judge for yourselves. Finally, hear the conclusion of the deposition of this witness, which states, "That I recommended peace and regularity to the meeting, and observed, that any tumult or disorder would ruin their common cause;" and that I told them, "there was no other mode of procuring redress, but by applying to parliament;" and that I recommended to them "to beware of admitting any immoral characters as members."

The next witness adduced for the prosecutor is Robert Weddell, vice president of the society at Kirkintilloch, who swears to the particulars which occurred at the same meeting, in which the preceding witness was present.

[Mr. Muir then read over his notes of this witness's deposition.]

In what respect does this witness criminate me? Does he not agree precisely with Johnstone concerning my general conduct? I am accused of vilifying the king and constitution:—and what does this witness say? That I made a speech, in which I advised regularity in their proceedings; and that they ought to proceed in a constitutional manner, as the law now is, by King, Lords, and Commons. The indictment alleges, that I spoke, and reprobated the monarchical branch of the constitution. But the witness swears, that I said nothing about the expense of the king, nor the comparative expense of the French constitution, nor the success of their arms. Gentlemen, I speak with candour; it is not in my remembrance, that I spoke concerning the comparative excellency of the French or British constitutions. You hear one witness declaring, that I merely compared them together; you hear this witness declare, that I made no mention of either constitution; both of them may have spoken truth according to the impression which was on their minds, but they show you the danger of trusting to the memory of witnesses, when it relates to words spoken in the warmth of a public discussion, and attempted to be recollected after the lapse of many months. But give whatsoever degree of strength you choose to Johnstone's evidence, draw from the comparison which I instituted between the French and British constitutions, an inference as highly criminal as you possibly can; the testimony of that man is completely overthrown by this witness. Mr. Weddell has stated to you what passed after the meeting was over, in private company, in the unguarded hour, when the mind dreads no danger, and when vigilance is asleep. Can any thing prove more strongly than the deposition of this man, the innocency of my conduct? The conversation related to politics, and to new publications; and surely materials of that kind are infinitely more noble in their nature, than those which deform convivial society, and disgrace the man. He remembers my speaking of Mr. Flower's book upon the French Constitution; a book which the lord advocate, although not specified in the libel, wished to insinuate as being seditious, and consequently an aggravation of my crime. Of the truly respectable author of this book I know nothing; but if from writing, a true idea may be formed of the heart which guides the pen, there is no man that I would more fondly call my friend. It is true, I recommended Mr. Flower there, because I recommended his principles every where.—I will do so still; I will do so in your presence, in the presence of the Court, and to this great audience. You, who wish for a reform in parliament, read and weigh well the lessons which this good man has given and inculcated.—Let personal reformation precede public; let the torch of knowledge lighten the path of liberty; but, above all, let sound morality, and genuine Christianity be the goals from which you commence your political career. A people ignorant—never can enjoy freedom; a people immoral—are unworthy of the blessing.

The witness next mentions, that the only book which I recommended to be purchased, was Dr. Henry's History of England. I am an enemy to the constitution,—and yet I recommended to the people the book best calculated to instruct them in its principles, and in its progress: a book applauded in private and in public by the earl of Mansfield, and upon whose application, the author received an honourable pension from the king; honourable to the granter, to the receiver, and to him who first noticed the modest merit of the writer.

The witness next proceeds to mention, that at the meeting, a person of the name of Boyd proposed, that Paine's Works should be purchased and recommended. What was my conduct upon the occasion? I said, it was foreign to their purpose; and foreign, surely, indeed it was. Without approving of Mr. Paine's principles, without condemning them,

I shall afterwards more fully show you, that the advice was such as became them and me in our situation at the time.

The witness mentions, that he purchased for the society three or four copies of the Political Progress. Does he say, that it was at my desire, or on my recommendation? No.—That he purchased for his own use and that of his neighbours, three or four copies of the Paisley Declaration of Rights: that he got a copy of Paine's pamphlet, but knows not from whom: that he never saw the Dialogue betwixt the Governors and the Governed, one of the charges against me in the libel; and that a Mr. William Muir showed him a number of the Patriot. In the name of common sense, what connexion have I with this extraneous matter? How does it tend towards my crimination? The witness swears positively, that the only book which I recommended to be purchased by the society, was Henry's History of Britain.

The witness declared, that a more equal representation of the people was the object of the society. Being asked by the solicitor-general, what he meant by a more equal representation, he stopt for a moment to consider. O! what matter of triumph was this! Then burst the contemptuous sneer; and then with affected ridicule was pointed out the absurdity of men so ignorant, embarking in the cause of reformation; when even their vice-president, the witness, who from his station, if any had known, he should have been the man. But by all,—excepting by Mr. Pitt and the duke of Richmond,—who contended for a reformation, no specific plan has yet been proposed. In all that was said in the late debate in the House of Commons, no specific plan was brought forward. Is it then a matter of surprise that the witness stopt for a moment to consider his answer to the question? His answer was such as did honour to the coolness of his mind, and to the soundness of his understanding. Two opinions, replied he, divided the society. One was for confining the right of election to landed property; the other for extending it to the body of the people: that he, for his own part, had not yet made up his mind upon either. Being asked my opinion, he swears, I gave none.

The witness depones to my express language, that I said to the meeting, that they would be the more successful, the more they were constitutional. Is this preaching up sedition? Is this inflaming the minds of the multitude to rebellion? With every witness adduced against me this day, this witness likewise corroborates my earnest advices to the people, to be regular, to be moderate, and to be moral.

The next witness proposed to be adduced against me was, the rev. James Lapslie. My objections to his admissibility were sustained, before I advanced upon the threshold of my proof, by the lord advocate's giving him up. Sorry am I indeed for the prosecutor's timely precaution; proof was thickening fast against this gentleman; proof of practices, proof of crimes, which———but I go no farther; the day will come, when this gentleman and myself shall exchange situations at this bar. I trust that by your verdict I shall be acquitted, and the moment after, I solemnly pledge myself to this nation, to exhibit against him a criminal accusation of the most serious kind. To say more would not be right, as tending to excite a prejudice against him in the day of his own trial. It is sufficient for me, that, even in this stage of the business, after the proof I was leading, my most rancorous enemy would have blushed to have brought forward this man's testimony.

The next witness was, Henry Freeland, president of the society at Kirkintilloch. The indictment charges me with having convocated the societies at Campsie and at Kirkintilloch. The witness depones, that there was an intention of having a society at Kirkintilloch, long before ever he saw me. Does this witness, the first president of that society, who, if any man could, must have been well informed of the circumstances leading to its formation, support the charge in the libel? Quite the reverse. I shall postpone the most material part of his deposition to the last. In my speech, he mentions, that I spoke about shortening the duration of parliaments and a more equal representation; that I said, that I thought taxes might be lessened by these means, and that the reform was not to take place as to the King and House of Lords, but only of the Commons. Call you this sedition? Does not every thing brought forward by these witnesses of the crown, confute the false, the injurious, and the scandalous charge in the libel, of vilifying the constitution and of exciting the people to rebellion against the king?

Mr. Freeland said, that I mentioned the success of the French arms, and that liberty would be established in France. Call you this likewise a crime? At the time when I spoke, was it not true? Were not the armies of France in every part victorious; and could I, not possessed of the power of penetration into the future, be sure that they were not to accomplish their object? Are not opinions, after all that has happened during the last months, as much divided as they were then? Can you go into private or into public company, where this topic forms not the most material part of their conversation? If merely to speak upon this subject be sedition you are all contaminated.

Mr. Freeland concurs with the other witnesses in remembering, that I recommended no other book to the meeting than Henry's History. That I told them all riot would be ruin to the cause; exhorted them to be constitutional and regular, and told them, that they were to petition parliament, and that there was no other way of getting a reform.

I now come to the most material part of Mr. Freeland's evidence, which relates to my lending him a copy of Paine's Works. Now let us take his evidence in the connexion of time. He tells you, that, having heard that a proclamation was against that book, he was upon that account curious to see it, and that he first spoke of it to me; that upon Tuesday, eight days before the society met, when I happened to be at Kirkintilloch, in the house of Wallace, to which I had sent for him, that I bid him search in my great coat pocket, and he would find the book; but that he had before this time, for the reason which he had mentioned, asked the loan of it from me. He farther tells you, that when he first spoke of that book to me, I said I thought it had a tendency to mislead the people; that he was surprised I did not recommend it, because every body else spoke well of it, and that I did not approve of it.

This is Mr. Freeland's deposition as to what passed between him and me, when he received Mr. Paine's Works. But his testimony goes farther, and corroborates that in which all the witnesses are unanimous, concerning what passed in the society when that book was mentioned; of its being suggested by one Boyd, to purchase it; but that I shook my head and said, it was foreign to the purpose.

Gentlemen, this is the most material evidence which the prosecutor has been able to produce. A wide field is now before us, and that I may deviate as little as possible from precision, I shall arrange what I have to say under distinct heads.

In the first place, the indictment charges me with feloniously and wickedly circulating and distributing this book, in order to inflame the minds of men against the constitution. You are the judges of the law and of the fact. Your decision will not separate them from each other, but combine them both together. Is it necessary for me to inform you, that, without a criminal intention, there can be no crime? and has not the indictment itself set forth, that I did not circulate these books merely, but that the circulation proceeded from such intention? Now, I ask you to lay your hands upon your breasts and to say, where, in the circumstances of this case, is the shadow of felonious design? The Works of Mr. Paine had been published and sold every where. The papers of the day teemed with successive advertisements, announcing where they were to be procured. What excited this curiosity in the public mind, without uttering a single syllable upon the intrinsic merit or demerit of these works, is easy to tell. The situation of France roused the attention of Europe. To that country every eye was turned, and every man who could wield a pen, was employed in discussing the principles which the revolution had brought forward. Mr. Burke entered the field of controversy. The name of that gentleman would give sale and diffusion to any production. Mr. Burke fought upon one side of the question. He was encountered upon the opposite by Thomas Paine. Both of them champions of approved vigour, and of undoubted prowess.—Could public curiosity not be awakened to the contention of such men? It was so most completely: and the Works of Mr. Burke and of Thomas Paine flew with a rapidity to every corner of the land, hitherto unexampled in the history of political science. Is there a single man among you, who has not read the Works either of Paine or of Burke? Is there a person upon the bench, upon the jury, or in this audience, who has not either purchased or lent the Treatise upon the Rights of Man? Now, if one of you lent to a friend or relation, who might participate in the common curiosity, a single pamphlet of Mr. Paine's, you are as guilty as I am; but why should I use the term guilty? None of us are guilty in lending that book, because we harboured no evil design.

If there had been a public law of the kingdom condemning that book, the presumption of ignorance could not be admitted by its rigid rule: and the mere act of giving away a single copy would have been considered as a violation of its letter. But at the period when I lent Mr. Freeland Paine's Works, was the sentence of reprobation thundered against them? No. I then was guilty of offending no existing law. I was not certified of my danger. I was not put upon my guard. Was there a judgment of any court in England or in Scotland against this book at that time? No. Then I had no cause for alarm. But some months before, a proclamation against seditious writings had been issued. A proclamation, gentlemen, is not law. It can declare and it can enforce what the law has already enacted, but it has no legislative authority. But was there any mention of Mr. Paine's Works in the proclamation? None. What were the consequences of this proclamation? You know them well. If there had been a demand before for political books, that demand increased in a ten-fold proportion. Concerning the particular books to which the proclamation might be supposed to allude, curiosity was more highly excited, and conversation became more keenly interested. Now mark the circumstances in which Mr. Freeland applied to me for the loan of that book. Here, take notice of his express words, "that having heard a proclamation of the king was issued against it, he was, upon that account, curious to see it, and first spoke of it to Mr. Muir." Now, I ask you, if any thing like felonious intention in Freeland can be discovered, in applying for it to me? a proclamation had been issued against seditious books, and a natural curiosity was excited in him to see what these books were, which he had heard reported to be seditious; a curiosity which, at the time, was common to all. I ask, if you could suppose there was a

felonious intention in my lending it? Did I introduce the conversation by speaking of it? Did I advise him to read it, to adopt its principles, and to contribute his exertions to carry them into practice? No. He expressly tells you, that I did not approve of the book; that I said it had a tendency to mislead the people; at which he was surprised, as it was otherwise approved by all. To what then reduces itself this mighty crime of sedition for which I stand here? To gratify the natural curiosity of a person who tells you he lives in my neighbourhood, and is a distant relation, I lent a book, which was in universal circulation, unnoticed by courts of justice, uncondemned by law.

If you have come here this day with an intention to bring me in guilty, whether right or wrong, say so boldly, openly, and let me add, honestly. Resort not to wretched pretexts and expedients to justify a stretch of power. These pretexts are soon seen through by the penetrating eye of mankind, and to the guilt attending the determination, will be added the contempt which the pretext will justify.

Gentlemen, in the second place, I would direct your attention to what Mr. Paine's writings are, and to the particular manner in which they are presented in accusation in my trial. I will allow that any writing which calls upon the people to rise in arms, to resist the law, and to subvert the constitution, is something worse than seditious,—that it is treasonable; but do the writings of Mr. Paine stand in that predicament? Can you point me out a single sentence where he provokes insurrection? Mr. Paine's writings are indisputably of a speculative nature. He investigates the first principles of society; he compares different forms of government together; and where he gives the preference, he assigns his reasons for so doing.

I have neither time nor inclination to entertain you by dissertations upon the liberty of the press. If that liberty is sickly, the constitution is likewise diseased. If that liberty is extinguished, the constitution expires. You will ask, What is the precise notion which I affix to the term liberty of the press? I will tell you honestly, and without disguise. —By the liberty of the press, I mean not the power of assassinating the reputation, of torturing the feelings of individuals;—no crime, in my estimation, can be more heinous;—by the liberty of the press, I mean not the power of degrading, and of contaminating the public mind by corruption of public morals;—by the liberty of the press, I understand not the power of inflaming the minds of men against the constitution, of stimulating the people to insurrection, and of tearing down the barriers of public property, and of public security. Where government is established, that government must be respected. And the truest republic which ever yet existed, never could tolerate the internal foe, who, within its own precincts, sounded the charge to civil war.—By the freedom of the press I understand the inalienable right of publishing truth; of presenting to the world whatever may tend to public good, and may not hurt the feelings of individuals, morals, nor established laws.

Constitutions of government are the workmanship of men; that constitution is the most perfect, which can be most easily amended. There are constitutions, which, step by step, without convulsion, and without blood, have advanced to superior degrees of perfection; which, by their own internal energy, have effected their own reformation, and avoided the calamities of a revolution. These progressive constitutions, if I may use the expression, must always cherish and support the liberty of the press, as the chief instrument of their preservation. Look back, I beseech you, to the ancient system in France. To you the observation may be singular, but I am confident in my own mind it is just. If, while the vestiges of their ancient constitution still remained, while the remembrance of the States General was not yet forgotten, the freedom of the press had not been annihilated, their constitution would have become progressive; its reformation would gradually have been operated, and by the exertions of good men and of patriotic writers, all the calamities which we now deplore in the revolution would have been averted. How grateful should we be to eternal Providence, that our constitution possesses in itself the power of amendment; that, without a revolution, it can rectify its abuses; and that, silently and without disorder, it can advance towards that chastened liberty, which constitutes human felicity. You have read the history of the British constitution; and what is it, but the history of a continual progress? You will next ask, what has been the impelling cause of this progress? I answer, the right of the universal diffusion of information by means of the liberty of the press. If you destroy that liberty, you accomplish one of two things.—The people will be buried in ignorance: the iron throne of despotism will be erected, and the silent———I cannot, will not contemplate the picture. If you destroy the liberty of the press, you may perchance do something else, which is horrible to think upon. This high-spirited and generous people will not soon forget their lost rights. You have removed what led to progressive perfection. Evil will proceed to evil. What originated solely from corrupted men, will be imputed to the constitution itself. By undermining its best prop, its most solid and massy pillar,—I repeat it, and never shall cease to repeat it,—the liberty of the press—you expose this holy fabric to a blow, which shall shake it from its foundations. Let us then apply this argument to the case of Mr. Paine. This work is merely of a speculative nature upon the principles of government.

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If Mr. Paine's work is inconsistent with the British constitution, what is the consequence? If the book is written with ingenuity, it will acquire readers. No man in his sound senses, the keenest advocate for a parliamentary reform, but will avert his eyes, bathed in tears, and in horror of soul, from a revolution. He will compare the principles of Mr. Paine with the constitution. If Mr. Paine has pointed out any thing defective in the constitution, he will contribute his humble efforts to have that defect repaired. If, upon the other hand, he shall imagine, that Mr. Paine has taken an erroneous view of this edifice, has misrepresented its properties, he will become more and more sensible, from his inquiry, of the security which he enjoys under its protecting roof. The sense of danger will be removed; and his mind, undisturbed by gloomy apprehensions, will enjoy tranquillity. O! how little do ye deem the British constitution, who think that it is built upon the sand, which when the rain descendeth, and the floods come, and the winds blow and beat upon it, that it shall fall. No;—when the rains descend, when the floods come, when the winds blow, it shall not fall, for it is founded upon a rock. I then maintain, although not in accents sweet to the ear of corruption, grateful to courtly pride, nor acceptable to ill-got power, that those speculative writers who investigate the principles of our constitution, who compare that constitution with those of other countries, perform a meritorious service to this nation: these writers either impel us to rectify that which is wrong, or more strongly confirm us in our love and in our attachment to that which is right. Let Mr. Paine then be considered as the bitterest enemy to our constitution, yet as long as he confines himself to speculation, we should be grateful. Our best interests are involved in the constitution, and like those of a still higher class, superior to time, and which extend to eternity, are too apt to be forgotten, and to make little impression. If Mr. Paine then has called our attention to the constitution, he has performed to us an essential service, he has led us to contemplate all its perfection, and roused us from our lethargy to rectify wherever, by time and by corruption, it may have suffered decay.

Shall the lending of a single copy of the works of this writer be held criminal? When was there ever such a violation of the rights of Britons? Mr. Paine has composed no model of a perfect commonwealth, as Mr. Hume has done; yet the political works of Mr. Hume you have all read, and you have all applauded. If you condemn a man for lending Mr. Paine's Works, you do what even was not attempted to be done in the reign of Henry 8th, when the constitution lay expiring on the rack of despotism, making exertions which only could discover remaining life, but at the same time the privation of strength. Along with equality of political rights, has Mr. Paine preached equality of property? a chimera which may enter into the brains of those, who may dream of a golden age, but who know not human nature. Yet, under that arbitrary reign, did not sir Thomas More, enjoying the confidence of the king, and placed at the head of the law, publish his Utopia, the plan of his republic, of which an equal division of property, an Agrarian law, an universal community, formed the basis? In this enlightened age, when, after so many fiery trials, our constitution, in its pure and genuine principles, stands unveiled to our view, will you condemn a man for lending a work, equally speculative and if such a thing existed as a well-founded panic against levellers, infinitely more dangerous?

I should be the last man to propose to your imitation, the conduct of despots; but I call upon you to ponder well the words of a man, who rendered the terms republic and pure and undefined despotism the same—Cromwell. Under his protectorship, when Harrington published his Oceana, informers denounced the work. "My cause is too strong," said Cromwell, "to be hurt by paper-shot;"* and if you say that by any publication, the British constitution can be injured, you, yourselves, are guilty of the crime of libelling its strength.

To conclude upon this head, I maintain, that to suppress works purely speculative, provoking not the people to disobedience to the laws, nor to rebellion, however much these works may differ from the constitution, is to destroy the liberty of the press, to trample upon the best and surest bulwark, which defends the approaches to that respected building. If, to lend the works of Thomas Paine to-day be sedition, to lend a translation of the Republic of Plato to-morrow will be treason. Gentlemen, the works of Mr. Paine are lying before me. I could read to you many passages to prove, that they are merely of a speculative nature. You are exhausted; equally so am I. And yet, we have some length of field, before we conclude, to travel over. For these passages I refer you to the celebrated speech of Mr. Erskine,† one of the best friends the constitution ever knew, although of that reprobated cast, the Friends of the People. Gentlemen, I trust that you will now be persuaded, that neither the publishing nor the lending of a speculative political book is sedition. But I now call your attention to another circumstance, the manner in which criminality is attached to that book and to myself. Various detached passages are quoted from it in the indictment. They are called wicked, inflammatory, and seditious. In the sacred name of justice, will

* This is better told in lord Erskine's Defence of Paine, *antè*, Vol. 22, p. 469.

† See the eloquent argument in defence of Paine, *antè*, Vol. 22, p. 410.

you condemn any book for detached passages separated from the whole connexion, cut off from reciprocal explanation, and from which neither its general tenor nor scope can be discovered? If you do this, where is the book in which you cannot discover sedition, by dissecting its separate sentences and paragraphs? For my part, if you proceed on in this manner, I do not know a more dangerous collection than the books of holy inspiration. Separate verse from verse, and then combine them, according to your pleasure, and you may make the bible one of the most seditious and treasonable books which ever was written. But you are neither to condemn that book, nor me, for those detached passages exhibited in the indictment. You must carry along with you the whole works of Mr. Paine, you must scrutinize, line by line, and you must pronounce upon the general context. If you find it provoking the people to resistance, calling them forth to arms to subvert the constitution, then, no doubt, it is seditious. But, if you find the author indulging himself in nothing but philosophical and political speculation, however much your principles and his may differ, you cannot condemn him for composing it, or me, after it was composed and published, for lending it to a relation.

If you condemn books for being seditious, upon account of passages culled from this page and from that page, and artfully combined together, you have it in your power to award a proscription against books and universal literature. As I have already mentioned, there is not a single book, in which, by dissecting it in this manner, sentence by sentence, and passage by passage, you may not discover immorality, blasphemy and treason. Indeed, if the sad objects of reflection which present themselves to my mind, when I contemplate the state of my country, could permit me to indulge in a vein of ridicule, I would advise you at once to lay the axe to the root of the tree, and to bring an indictment against the alphabet itself, as it is the source of the evil you dread, as its parts form the component elements of sentences and of paragraphs, which may contain the most dangerous sedition, and the most horrible treason. But this is not an hour to indulge the sport of humour.

I will admit, that the passages from Mr. Paine and the books exhibited in the indictment may be highly criminal, but will any person venture to say, that I lent these books, for containing such passages, that I particularly pointed them out, and gave them my warmest approbation? If the prosecutor has a right to presume, that it was upon account of these passages I lent these writings, I too have a right to draw a contrary presumption in my favour. If there are sentiments in the works of Mr. Paine (and many such there are) fraught with universal benevolence, inculcating universal amity and brotherhood, and of a tendency to dispel those passions and those prejudices, which animate and impel nation against nation into the field of blood and of carnage, I am entitled to plead upon these passages: I have a right to say, that it was the antidote, and not the poison I recommended: and you must know, that the law of this country obliges you, where opposing presumptions are of equal strength, to let the balance preponderate on the side of mercy.

Gentlemen, I shall conclude upon the subject of Mr. Paine's Works by observing, that all the witnesses have uniformly sworn, that I refused to recommend them; that when the matter was proposed, I said, the principles contained in them might mislead the people, as they were foreign to the object of the society, and might misguide weak minds. There is not a witness adduced by the prosecutor, who says the contrary of this; and will you agree in opinion, that the charge in my indictment of circulating and recommending these books, has the slightest shadow of support? I will tell you the reason why I did not recommend Mr. Paine's books to the societies in Scotland, and why I declared them foreign to their purpose.—Mr. Paine is a republican, and the spirit of republicanism breaths through all his writings. This is his darling system. The object of these societies was, by constitutional means, to procure a reformation in the constitution, and not a revolution, which implied its destruction; to have their long lost rights restored, but not the assumption of new rights derived from a different system. The people of Scotland were rapidly advancing to a true sense of their constitutional liberties: they demanded an application to them of the constitution, in its genuine principles, in which they beheld their security confirmed, and their happiness established. That they might advance with more ardour in this cause, it was necessary that they should know the constitution; what it had been in its vigour, and what it now is in its decay, in consequence of the corruption of men and of ages. What did I do to effectuate this legal and peaceable object? I did not present to them the splendid fabrics of ancient or of modern republics; I wished them to keep their eyes confined at home, to repair their own mansion rather than pull it down, and expose themselves to the inconveniences and to the dangers of building upon new plans, the advantages or disadvantages of which could be only known by the uncertain experience of future ages. All the witnesses who speak of my conduct in the societies tell you, that I recommended none but constitutional measures; and that the only book which I recommended to them, was Henry's History of England, as the best calculated, by its accuracy and plainness, to give them insight into the nature and progress of their constitution.

If, in my library, in conversation upon the subject of government, the plans adopted by different political writers had been discussed,

doubtless, I might have given opinions different from those which I considered it my duty to advance, when acting under an established constitution, and employed in those measures which it pointed out, to effectuate a redress of grievances. When Mr. Hume published his Essay upon a Perfect Commonwealth, did not he, as strongly as he possibly could, declare that he thought this model preferable to the British constitution, even in its purest and best principles? But supposing Mr. Hume to have been a member of the Society of the Friends of the People, what would have been his conduct in it? Would he have said to men who were assembled to renovate constitutional rights only, you must give up the constitution entirely; it is defective and imperfect when compared to the offspring of my fancy; it is this last which you must adopt, and reject the former? But Mr. Hume would have held forth no such language; he would have said to them, "The grievances of which you complain, can be redressed by the energy of our own constitution; the redress of these grievances is the only object of your association. If then reformation is your object, and not revolution, however much you may approve of my speculative system, it must not operate upon you for a moment in practice."

It was upon this principle that I refused to recommend the works of Mr. Paine; that I said, that they were foreign to the purpose, and might mislead weak minds. But was it ever before held criminal in an author, to publish what speculative systems of government he pleased, provided he confined himself in the retirement of speculation, and did not advance forth to the field of action? Was it a crime of Plato, under the Athenian republic, to compose his beautiful system of one more perfect? Was it high treason in Cicero, under the Roman Commonwealth, to write those applauded works, which have been lost in the darkness of the gothic night, and of which a few fragments only could be found, when the morning of letters began to dawn upon Europe? Was sir Thomas More led forth to the scaffold for composing his Utopia, Harrington proscribed for his Oceana, or Hume exiled for his Commonwealth? These authors indulged themselves in a liberty, which if we now are to be deprived of, we must be left hopeless and in despair, as the attempt at amendment and reformation will be for ever precluded.

Upon the principle which I have explained, I should have thought it equally, if not more dangerous and inexpedient, to have recommended in a society of the Friends of the People, Plato's Republic, or Hume's Commonwealth. Inexpedient! because these writings might have had a tendency to lead these societies from their constitutional object; dangerous! because, if presented to weak understandings, and to fervid imaginations, they might have influenced them to depart from those ends, which, by calmness, perseverance, and legal measures, they were sure at last to accomplish, in pursuit of chimeras, brilliant but delusive, always seemingly approaching, but always in reality flying farther away.

Gentlemen, I conclude my observations upon the subject of Mr. Paine's Works. You will remember it was only a single copy which I lent; the circumstances attending it, which, admitting the book to be as seditious and as treasonable as can be imagined, precluded the idea of a felonious circulation. You are the first jury in Scotland, before whom Mr. Paine was either directly or indirectly brought; I trust, that you will act in such a manner as to do honour to yourselves, in doing justice to him and to me; that you will not attempt to annihilate political science, by condemning a work in its nature purely speculative; that, in this country, where our chief glory has arisen from literature, you will not limit her researches, but indulge her in her unbounded flight, into every region where the materials of human happiness and human improvement can be collected. Above all, I entreat you, that you would not set the dangerous precedent of condemning a book, for sentences detached from the whole, when you do not consider the general tenor and scope. I tell you that if you do not carry away this book from your table to your chamber, read every line, and compare the whole in connexion, you do me most flagrant injustice. Finally, I must tell you, that you are not bound by what any jury has done in England—you are bound by the law of Scotland; and this is the first trial of the kind which ever occurred here:—even the decisions in England have lost the respect due to them, although they were to be held out as precedents. We have seen juries one day condemning the author and the publishers, and upon the succeeding day, we have heard other juries pronounce a verdict of acquittal.*

The next witness is Anne Fisher, a late servant in my father's house. Her evidence comes forward to you with peculiar distinction; caressed by the prosecutor, and complimented by the Court;—her wonderful accuracy extolled, and her abilities admired. I will soon show you, gentlemen, that she has but few pretensions to that accuracy, of

* See the trials of Thomas Paine, of Daniel Isaac Eaton, and of Daniel Holt, *antè*, Vol. 22. For publishing Paine's writings, many other persons were prosecuted and brought to trial, whose cases I have omitted, not having met with any report of them worth preserving. Some account of the contradictory verdicts returned on these occasions, will be found in Daniel Holt's Vindication of the Conduct and Principles of the Printer of the Newark Herald, pp. 80, 81.

which the lord advocate spoke in such terms; —that her memory possesses a singular quality, retentive to whatever may militate against me, but hesitating and confused to whatever may seem in my favour. What this domestic and well-instructed spy has given in evidence against me, fills my mind with little concern; on the contrary, it affords me much satisfaction to find, that when I was surrounded in the place where I expected most security,—where all suspicion was lulled asleep, my conduct was so guarded———— What do I say?—Guarded! Innocence has no need to be on the watch;—My conduct has been such, as even malice itself cannot condemn. But before I proceed to read her evidence from my notes, let me solemnly caution you against the dangerous precedent of giving credibility to witnesses of this kind, under accusations of this nature. The crime of sedition, if you attend to its essence, never can be committed within the walls of a private house. It supposes the highest publicity, the convocation of many. But if power shall say, that words spoken in an unguarded moment within the sacred walls of a family, amount to this crime, what will follow? Not those with whom you may have acted in your political life, and who, with the impression of the oath of God upon them, can best tell the truth; not those whom you may have admitted to your friendship, and to your confidence, and who best know the secrets of your soul; but the meanest of your domestics, who could hardly approach your presence even in their menial duties, who (if the expression may be used) to the members of a family are almost unknown;—These! These! The meanest and the lowest—will be brought forward to swear away your property, your reputation, and your life: and such is this witness, who is adduced against me with such parade. O! beware how ye sanctify the shameful proceeding. It is not me you wound alone, but you destroy the confidence which subsists between man and man; you lead, by your own hands, to the fire-sides of your children and your dearest relations, the fiends of suspicion and of danger; and ye for ever put an end to that reciprocity of communication, which enlivens and endears domestic society.

Now let us hear what this witness has to say? I will read you from my notes her evidence. If I have erred in taking it down, you will please to correct me.

[Here Mr. Muir read from his notes, the evidence of Anne Fisher.]

The testimony of this witness seems to relate to two of the principal charges in the indictment; the first, to my having made speeches in public societies, vilifying the king and constitution. The second, to my having distributed and recommended seditious books, viz. Mr. Paine, the Patriot, the Paisley Declaration, and the Dialogue between the Governors and the Governed. Under these two different articles, let us examine the testimony of this witness.—First, to my making seditious speeches; Secondly, To my circulating seditious books.

Every thing which the prosecutor could adduce against me, he has told you that he would adduce under the generality of the term sedition, even although it should not be specified in the libel. The Court likewise has permitted him so to do; and in the case of this witness, you can see an exemplary illustration of this right, if it can be so called. Accused of making seditious harangues in public, this wretched girl is adduced to swear to what she says, she may have heard in private, when instructed to take her watch, she stood and marked to destruction those who fed her.

And what is the dreadful language she has heard me use in my unguarded moments? I will repeat all that she says, I will recall to your remembrance her express words, and upon them I will make no comment. "That if every body had a vote, I would be made member for Calder;—that members of parliament would have thirty or forty shillings a-day, and that, in that case, there would be none but honest men to keep the constitution clear." You remember how the public prosecutor enlarged and expatiated upon these words of this witness. Now, after labouring so long in vain, he fancied he had got something against me. I smiled at the indecency of his exultation; but next moment I blushed when I reflected he was a lawyer, and chief counsel in Scotland for the crown. "Here," said the prosecutor, "you see the cloven foot. —You see French principles manifested. Here you discover the whole tincture of his soul. Members of parliament to have thirty or forty shillings a-day for their attendance,—to be honest men, and to keep the constitution clear! Is not this evidence, that he means to introduce in place of our House of Commons a National Convention, on French principles, and according to French forms?"

Sorry am I to record the ignorance of this lord advocate of Scotland. Is there a man who has hardly opened the volume of the history of our constitution, who does not know, that until a very late period indeed, when corruption glided in, and tainted and poisoned the whole, members of parliament received their wages from the hands of the people alone? O! how I speak it with joy when I view the past: with sorrow, when I contemplate the present; they would have scorned to have received the price of their attendance from any other hands, than from the hands of the people. Then the constitution possessed all its energies. Then towered the constitution in the strength of manhood, but with the bloom of youth. The people delegated none but men whose virtues they knew, and none but men who possessed public virtues could be found to undertake the important mission. Look back, I entreat you, to

all the great and good men whom English history records. Turn your eyes to the Hampdens, to the Sidneys, to the Marvels of former times; to those men whom—— but I stop; they received their wages directly from the people. Let the lord advocate pronounce their eulogium by his invective. If what I have said be sedition, when overheard by that spy Fisher, I shall next moment render myself infinitely more criminal; for I declare to you, that we never can expect a virtuous House of Commons, a constitutional House of Commons, a House of Commons such as it once was, connected with no other interest than the interest of the people, until such time as its members shall receive a compensation for their attendance from the people, and from no other quarter, be entitled to no other reward than the approbation of their own minds, and the applauses of their fellow-citizens, of whose rights, and of whose liberties they have been the undaunted, uncorrupted defenders.

Fisher proceeds to state, that she has heard me say, that France was the most flourishing nation in the world, as they had abolished tyranny, and got a free government: and that farther, she has heard me say, that the constitution of this country was very good; but that many abuses had crept in, which required a thorough reform.

Gentlemen, even in my most unguarded hours, this domestic spy cannot, by her evidence, support a tittle of the indictment, where it charges me with vilifying the king and constitution.

Of her idle story of what I said concerning courts of justice, that they needed a reform, and that this court in particular got their money for nothing, but pronouncing sentence of death upon poor creatures, and that their parade in coming into Glasgow was useless, I disdain to take notice. Only, you will discover her exquisite art. This day, I am tried before this very Court, and she supposes, that by inventing and throwing in a circumstance of this kind, in order to irritate the judges against me, she will more completely execute the wretched job she has undertaken to perform. Were there not more servants in the house, who had infinitely better opportunities to hear my conversation; and must she, the lowest of them all, with whom she cannot pretend I had ever two minutes conversation, be singled out, and pitched upon for this drudgery?

This witness depones, that she heard me say, a republican form of government was the best, but a monarchical form of government, under proper restrictions, would be the best in this country. With all her art, and with all her memory, she cannot depone to a single circumstance which can strike against me. Even from her own account of my private conversation, it appears, that when I spoke of republican forms of government, it was purely in the abstract, without any allusion to this country, without expressing any wish to see any particular mode of them introduced; and that when I spoke of this country, I never deviated from the constitution, but said that a limited monarchy under restrictions, was the best adapted to its interest.

The next article of sedition to which she depones, is of the most extraordinary kind, that I had sent her to employ an organist in the streets of Glasgow, to play the French tune of *ça ira*. What was a tune, unintelligible to the multitude, to light up the flames of civil discord, and to be the forerunner of the revolution? Have you read the words of that popular song? Could you discover a single allusion in them to the state of England? But supposing you did, there is a presumption from your station in life, that you are acquainted with the French language; but is it so with the multitude of our weavers in that quarter of the country? Britain has always cherished freedom, and shall it be deemed criminal in me, to listen to the effusions of joy poured out by a neighbouring people, on obtaining that first of human blessings, which always constituted our peculiar distinction? But I know it well. The word "freedom" is soon to be proscribed from our language; it carries alarm and sedition in the sound. If I had caused to be recited one of those noble choruses of the Grecian drama, in which, with the enthusiasm of liberty, the glories of the republics of Athens or of Sparta were displayed, in language more than mortal, my offence would have been deemed the same with that of amusing myself, by hearing the national song of France. If it had been possible for me to have caused to be sung, upon the streets of Glasgow, one of the psalms of the Hebrews, in the original language, in which the triumphs of the people and the destruction of tyrants are recorded in a strain of the highest poetical inspiration, the criminality would have been the same with that of listening to *ça ira*.

Let me abandon the subject. My political career has neither been obscure nor inglorious. It has undergone the severest scrutiny which ever fell to the lot of man; and after every engine has been employed, after heaven and earth have been moved, the tremendous charge of sedition is to be supported by the testimonies of domestic spies, swearing, not to my serious occupation, but to the amusement of an idle hour, in listening to a foreign tune.

Let us next attend to the evidence of Fisher, as far as it relates to seditious publications. She swears that I used to recommend to a great many country people who came to my father's shop, to purchase and to read the Works of Mr. Paine, as they composed a very good book. How can you believe the general averment? In the number of country people, she can only specify one, John Barclay; and when you come to his evidence you will see that he gives her the flattest contradiction.

She depones, that she has bought, at two different times, for my uncle Alexander Muir, at my desire, a copy of the first part, and a copy of the second part of the Rights of Man. Can you suppose, that if my intentions had been felonious, I would have introduced such writings into my own family? Can you imagine that I could have wished to involve, in the conflagration of my country, my nearest relations to whose property I may eventually succeed? Why is not Alexander Muir brought forward as a witness? Certain it is, that he was closely interrogated, before the inquisition held by Mr. Sheriff Honeyman. But the lord advocate says, that his feelings would not permit him to examine the uncle against the nephew. Wonderful humanity! Goodness ever to be remembered and extolled! But did not you, Sir, advise and direct the whole proceedings against me; and will you have the effrontery to maintain that Alexander Muir was not dragged like a felon from his own home, by the myrmidons of power, carried before your friend Honeyman, and that every art was employed to wring from him every domestic secret?

Speak then to us of your humanity—continue to speak to us of your feelings!

Fisher next depones, that I much pressed John Muir to purchase Paine's Works, that he was prevailed upon, and that she was sent accordingly to purchase them. Now you will hear the evidence of this man immediately, in express contradiction to this witness. She next tells you, that I advised another domestic, Wilson, my hair dresser, to purchase Paine's Works, and keep them in his shop, in order to enlighten the people, and you will hear Wilson immediately express himself far otherwise. She speaks of carrying some paper, which she thinks was a Declaration of Rights, to a printing office to be corrected. Every thing in her evidence is made to tally with the indictment; I am accused of circulating a paper, intituled a Declaration of Rights by the Friends of Reform in Paisley. And this respectable personage! so highly complimented by the Court, must likewise swear something concerning this. Yet her tenacious memory utterly fails her. She thinks she can only remember what the title was, but nothing more. She knows nothing of the substance of the writing; but her evidence is to give a colour to the allegation of my having circulated that paper from Paisley, and to furnish ground for insinuating, that—I myself was the author of it.

Gentlemen, the witness next swears to a fact which must rouse, as having domestics yourselves, your keenest indignation. Vigilant has this family spy been in the course of her duty. She tells you what books she has seen lying upon my table. Not contented with describing the title of the books, she must go more deeply; and she informs you, that she saw, in my house, a copy of Paine's writings upon fine paper, and one or two copies upon coarse! Gentlemen, from this moment, lock up your libraries. If they are extensive, as you have heard mine is, there is no crime in the whole catalogue, of which, by the testimony of your own servants, you may not be found guilty. The possession of Plato, of Harrington, or of Hume, will mark you down for republicans. The misfortune of having the Alcoran of Mahomet will cause the shipwreck of your faith, and stigmatise you as the disciples of the conqueror of Mecca. Well do I congratulate the lord advocate of Scotland.—He has discovered a new region in the sphere of criminality.—He will not merely confine himself to a voyage of discovery; but, along with his associates, he will make many voyages to this fertile land, and return home loaded with many valuable cargoes. But seriousness becomes this place. Can it be believed, that in the close of the eighteenth century, that this night the servants of a man should be examined concerning what particular books he may have had in his house; and that the proof of the possession of particular books may ruin his reputation; sweep away his property; and deprive him of his life?

Let us proceed with this witness. If you possess the common feelings of men, every sentiment of indignation must be excited, not against her—she is to be pitied—her task has been a dreadful one;—but against the manner in which this crime of sedition has been attempted to be proved.

The libel charges me with feloniously circulating a Dialogue betwixt the Governors and the Governed, extracted from the Ruins of Volney. This dialogue is narrated in the indictment, and it is charged to be felonious and seditious. There is not a word in this dialogue which is not true. Alas! in colours but too faithful, it delineates the mournful history of 6,000 years;—the crimes of despots, and the artifices of impostors, to subjugate, and to blind the people. It is purely abstracted. It is entirely speculative. To no particular nation, much less to England, does it allude; if to any, it must be to France, under the ancient system. Yet, this dialogue is libelled as seditious and inflammatory. The truth is, the crime of sedition must be brought home against me; and the possession of any book, as well as that of Volney, must be employed to substantiate it. Let us hear what the witness says concerning the felonious circulation. She heard me read it in the presence of my mother, sister, and some other people; that I said it was very clever, and done by Velnew, one of the first wits in France. Who were those other people who were in company with my mother and sister when I read it? Her accuracy, so much extolled by the Court, totally fails her. But the propagation of sedition must not be confined to a mother and a sister; it must have a wider range;—other people present! and founding upon his beloved generality, the prosecutor

has reason to argue, there might have been a full company, a numerous meeting,—nay,—an immense congregation.

You have heard the testimony of Fisher, and these are the arts, and of this class are the witnesses, by which I am to fall. By receiving such testimony, you for ever destroy domestic society, and you blast the blossoms of family confidence; you render all suspicious of all; each relation, to behold in each, a deadly foe.—And is it not sufficient to weep over public calamities, that wide-spreading desolation, which, at present, passes over the nations; but when we retire to our own homes, we must be obliged to confine ourselves in a dismal solitude, guarded by suspicion and by danger, where no kindred affections can enter, and where no reciprocal consolation can be admitted?

I hasten over the evidence of the remaining witnesses against me. I am overcome by the exertions of this day; and you must be greatly exhausted.

The next is the evidence of Thomas Wilson, my hair-dresser, and he is brought to bring up the rear of Fisher's testimony. He depones, that I asked him if he had bought Paine's Works, and that I advised him to get a copy of them, as a barber's shop was a good place to read in. Does this confirm the testimony of Fisher, who says, I desired him to buy that work, and to keep it in his shop, in order to enlighten the people? Mark the art of Fisher. How strongly she paints what might seem to strike against me—to enlighten the people! But does Wilson concur in this? No. Wilson—the person who should have best remembered—the person to whom the words were addressed,—Wilson tells you, that he bought a copy of the Address to the Addressers; but that was not by my advice. He even recollects the levity of conversation. An old man, from the country, came in while he was dressing me; he remembers me saying, that this old man was a great reformer. If I ever said so, I wish it may not have been in jest, but in earnest; and that the fact, with regard to the man, was true. For I know of none who should be greater reformers of themselves and of others, than those who are standing on the brink of the grave, and panting upon eternity. But I am afraid that this witness remembers only a piece of unmeaning gaiety. For he adds, the old man said I was only taunting him.

The conclusion of the evidence of Wilson affords me high consolation. It is a proof of the innocency of my private life, in moments when I could not possibly think of the affectation of integrity. He swears, that he has always heard me say, that I would maintain the constitution, and that I wished for peace, and good order, and good morals among the people; and that he never heard me speak against the king.

The next testimony is that of John Muir. He tells you, that he had a conversation with me in September last, about Paine's book, in my father's house; that he asked the loan of it from me; that I told him I had it not. Does this resemble the conduct of a man accused of distributing these books to all and sundry, and scattering them over every portion of the land? He says, I mentioned that I would send a servant who would get it for him; that a servant girl accordingly went and got it. Does not this completely confute the testimony of Fisher, who affirms, that I much pressed this man to purchase that book? and he tells you, that he himself asked the loan of it.

Is not this a complete contradiction of her testimony?

The next witness is John Barclay, that old and venerable person, whom you saw adduced as a witness by the prosecutor; and what does he say in his testimony? That we were elders in the same parish—the parish of Calder, in which the lands of my father are situated. He informs you, that at the last election of a minister for that parish, a dispute had arisen concerning the right of election, and that he voted upon the same side of the question with myself. This introduced acquaintance, and acquaintance produced friendship. The lord advocate, in speaking of this virtuous and venerable old man, exclaimed with insolent contempt, Such men as these are the companions, and such men as these are the friends of Mr. Muir! Yes, I tell the lord advocate, I tell the aristocracy of Scotland, I glory more in the friendship of such an old, poor, and virtuous man, than in the friendship of the highest-titled peer, who derives the source of his guilty grandeur from the calamities of the people; who wrings out a splendid, but a miserable revenue from their sorrow and distress, from their tears and from their blood, which he squanders in dissipation, to the ruin of private virtue, and to the contamination of public morals.

Let us see then what Mr. Barclay says against me. That he asked my opinion concerning Paine's books, and that I told him he might purchase them if he chose, as they were printed; but that I afterwards said, it was not a book for us. Does Mr. Barclay's evidence support the criminal charge in the libel, of my advising people to read seditious books, and of my circulating them over the country? Does not Mr. Barclay's evidence corroborate the testimony of every other witness? That for the reasons which I fully explained, I never recommended Mr. Paine's Works; but that even when that work excited the greatest attention of the country; when mention of it was introduced into every company, and into every conversation, I uniformly expressed myself that it was not a book for our purpose;—for our purpose, who were engaged in the cause of a parliamentary and constitutional reform! Is there a single witness brought forward by the prosecutor, who has, in the smallest degree, stated any

conversation of mine which was unconstitutional? Hear what Mr. Barclay says;—that he was frequently with Mr. Muir, and in his library, from which he borrowed some books; that he had many conversations with him, and heard him say, that the constitution of this country was an excellent one; that he praised the king; and that he always spoke of order, regularity, and obedience to the ruling powers. In short, gentlemen, all and each of the witnesses for the prosecutor use the same uniform language, attest that, neither in public nor in private, ever a single expression dropped from me, which the most violent *associator* could construe into guilt.

The last witness of whom I shall take notice, is William Muir; the person whose religious principles at first induced him rather to suffer, according to the elegant expression of the lord advocate, eternal imprisonment than to take the oath, until his scruples were removed by the rev. Mr. Dunn. He swears, that in my father's house, at Huntershill, I gave him eleven numbers of the Patriot, and a copy of the Political Progress. From these numbers of the Patriot, several passages are quoted in the indictment. Of the Political Progress, there is no mention made; and I maintain, that every passage in the Patriot, quoted in the libel, is highly constitutional. The sentiments advanced in them, may not sound musically sweet to the ears of corruption. They call upon you to arise and vindicate the purity of your constitution; to vindicate your long-lost rights; and, if my feeble voice could extend to the remotest corners of Scotland, I should resound the same sentiment, in the same language. These numbers of the Patriot, speak to you concerning septennial parliaments. And I say to you, that the act which converted triennial parliaments into septennial, violated our holy constitution, tore the charter of our national liberties, and paved the way for the inroads of a frightful despotism.

But this witness concurs with all the preceding witnesses, with regard to my conduct and to my principles. He swears, That he does not remember to have heard me speak against government; that I did not advise unconstitutional measures; and that he heard me tell how Old Sarum was represented. Old Sarum represented! And, do not the friends of the constitution weep, and do not the enemies of the constitution smile, when they hear of such representation?

Before I speak to the third article of accusation, the reading in the convention the address of the society of United Irishmen in Dublin, permit me to make one observation, on the manner in which the prosecutor spoke of the papers found in my custody. Do they correspond with the view which he presented of them? Are they the documents of correspondence with foreign or internal foes? And supposing I had involved myself in a correspondence of that nature, do you believe I could be so infatuated as to retain in my possession, that which must have been attended with, to me, certain destruction? Among my papers, there is not one which can be construed into guilt. They consist of pamphlets unconnected with the politics of the day; and of the various publications of a society, pure and untainted in its principles, of which I have the honour to be a member. But every thing must be ransacked to heap crimination upon my head. One of the letters which I had undertaken to deliver in Scotland, is addressed to the reverend Fyshe Palmer. Mark! cries the lord advocate, the company which this man keeps.—Who is Mr. Palmer?—A person whom I have indicted for sedition, and who is to be tried in a few days at Perth!—Unheard-of cruelty!—Unexampled insolence!—What! Before this Court, this jury, this audience, do you attempt to prejudicate and condemn Mr. Palmer, in his absence, undefended, and without any possibility of defending himself? But, exclaims the lord advocate,—The seal upon the letter is a proof of the most atrocious guilt. What is it?—Horrible to tell! It is the Cap of Liberty, supported upon a spear, with the words *ça ira* above. All is consistent. When you attempt to banish the substance of freedom—the shadow must follow! When a new coinage takes place, you have given a most excellent hint. The officers of the mint will profit by the lesson, and they will no more scatter sedition through the land, by impressing upon our halfpennies the figure of Britannia with a spear in her hand, mounted with the Cap of Liberty. But I am ashamed to enter into such trifles. If that letter had contained proofs of sedition, or of treason against me, Mr. Palmer, or the writer of it—the seal—and the spear—and the Cap of Liberty, would have been its feeblest protection.

Gentlemen, I now come to the last charge: That of having read, in the convention of delegates, the Address from the society of United Irishmen in Dublin.

I admit the fact, and I glory in the admission. The prosecutor has represented that society, as a gang of mean and nefarious conspirators; and their diploma of my admission into their number, as an aggravation of my crime. Let me tell the lord advocate of Scotland, that society stands too high to be affected by his invective, or to require the aid of my defence. I am a member of that society; and, in the last moments of my life, to have been so shall be my honour and my pride. The lord advocate has represented to you, in general terms, that this address amounts almost to treason; but he durst not attempt to point out, in his speech, a single passage which could support the aspersion. I maintain that every line of that address is strictly constitutional. You must carry the whole of it along with you into your chamber, and not judge of passages scandalously mu-

tilated in the indictment. The mutilation of the very first paragraph of the address is a proof of the fairness, and of the ingenuity of the prosecutor. I beg leave to read how it stands in the indictment, and then to read what follows in the address itself.

"We take the liberty of addressing you, in the spirit of civic union, in the fellowship of a just and common cause. We greatly rejoice that the spirit of freedom moves over the surface of Scotland; that light seems to break from the chaos of her internal government; and that a country so respectable for her attainments in science, in arts, and in arms; for men of literary eminence; for the intelligence and morality of her people, now acts from a conviction of the union between virtue, letters, and liberty; and now rises to distinction, not by a calm, contented, secret wish for reform in parliament, but by openly, actively, and urgently willing it, with the unity and energy of an embodied nation. We rejoice that you do not consider yourselves as merged and melted down into another country, but that in this great national question, you are still—Scotland."

This is the first paragraph libelled on. But, even as it is in the indictment;—Is it not permitted to the united Irishmen in Dublin, to congratulate this unfortunate people upon account of former eminence in literature, in arts and in virtue;—and to express the wish that they would still retain that enviable distinction? And, is that last and forlorn period now arrived, when those who express such a wish, must be called nefarious conspirators, and he who has been the organ of its communication, must be branded with the epithets of, a "wretch," of an "oracle of discord," of "a fiend of sedition?" The children of your children, in after ages, will not forget this ever-to-be-remembered night. But here let us stop. I have said that this indictment mutilated this passage, as it does every other passage in this Address; it breaks off the paragraph at the words, "You are still Scotland." It breaks off in the middle of a sentence; and for what purpose?—to countenance an insinuation, that the united Irishmen in Dublin wished a dissolution of the union betwixt Scotland and England. The prosecutor cuts off the remainder of the sentence which demonstrated the sense in which the United Irishmen understood the words "still Scotland," expressing solely their idea of her still being distinguished by her former lustre. The words which are separated from the sentence are in the Address as follows: "That you are still Scotland—the land where Buchanan wrote, where Fletcher spoke, and Wallace fought." Yes, I give my solemn assent to this wish, and to this hope of the United Irishmen. My voice shall resound, Scotland shall still be the land, where Buchanan has written, where Fletcher spoke, and where Wallace fought.

Let us attend to the mutilation of another passage in this extraordinary indictment. I shall read it as it stands:—

"We will lay open to you our hearts. Our cause is your cause—If there is to be a struggle between us, let it be which nation shall be foremost in the race of mind; let this be the noble animosity kindled between us, who shall first attain that free constitution from which both are equidistant, who shall first be the saviour of the empire.

"The sense of both countries with respect to the intolerable abuses of the constitution has been clearly manifested; and proves that our political situations are not dissimilar; that our rights and wrongs are the same."

The passage libelled upon stops at the words "rights and wrongs are the same." But it forbears to take in the remainder, in which the similarity of our rights and wrongs is specified. The self-elected magistrates of burghs—the unequal representation of the people in parliament—and the total privation, in Scotland, of the shadow of popular election.

Gentlemen, I will read over many passages of this Address, not merely because they are the production of an immortal pen, but because every word is regulated by the spirit of the constitution.

[Here Mr. Muir read most of the Address.]

Can you call this address seditious or inflammatory, which contains the following sentiment? "If government has a sincere regard for the safety of the constitution, let them coincide with the people in the speedy reform of its abuses, and not by an obstinate adherence to them, drive that people into republicanism."

Gentlemen, the lord advocate has represented the authors of this Address as the meanest of mankind, and has expressly called them infamous wretches, who had fled from the punishment due to their crimes. What slander!—what false, unfounded slander!—Has Doctor Drennan,—has Mr. Hamilton Rowan,—whose names are at the head of this address, fled from crimes and from punishment? "And they are infamous wretches?" If ever after ages shall hear of my name, I wish it may be recorded, that to these men I had the happiness of being known. To be honoured by the notice of Doctor Drennan, is an ambition to which, in the most exalted station of life, I would fondly aspire. To have it said, that I was the friend of Mr. Hamilton Rowan, I would consider as the passport to the only acquaintances whom I value—those who found their claim to distinction upon the only true basis, their own virtues. Mr. Rowan is indeed indicted to stand trial in Ireland, upon a charge similar to my own. Mr. Rowan has not fled. He will boldly meet his accusation; and, let me say, along with those who know him, that although it is impossible to add any new lustre to his character, yet, as he has often come forward in the cause of individual hu-

manity, he will display himself upon that occasion, the firm, the intrepid, and I hope, the successful champion of the liberties of his native country.*

I hasten to a conclusion. Much yet remains to say. But after, upon my part, the unremitted exertions of sixteen hours, I feel myself nearly exhausted.

Look once more, I entreat you, to the indictment, and compare it with the evidence.

The first charge against me is, that in public speeches, I vilified the king and constitution. All the witnesses adduced attest, that, both in public and in private, even in my most unguarded moments, my language was always respectful to the king, and that I always recommended the constitution.

The second charge against me is, that of advising the people to read seditious books, and of distributing inflammatory publications among them: and you hear it proved, by the unanimous voice of all the witnesses for the Crown, that I refused to recommend any books, and that the only one which I recommended, was Dr. Henry's History of England. You will not forget the circumstances in which I lent Freeland a copy of Mr. Paine's Works; nor will you forget the manner in which the writings of that man were introduced in conversation with Wilson, Muir, and with Barclay. With regard to other books and pamphlets mentioned in the libel, there is not any proof. William Muir has deponed, that I gave him one or two numbers of the Patriot, and some other pamphlets, whose titles I cannot remember. William Muir is but a single witness to this fact; and you know that, by the laws of Scotland, the testimony of a single witness cannot claim any weight; but I frankly admit and acknowledge, that I gave him those numbers of the Patriot, and, if I were not now entirely overcome by fatigue, I could demonstrate to you, that, in those numbers, there is not a single sentiment unconstitutional or seditious.

I am accused of reading the Irish Address in the Convention, and of moving a solemn answer in return. That address is neither seditious, wicked, nor inflammatory. There is not a sentence in it, which I have not defended in your presence.

You neither can do justice to me, nor to the country, if you condemn these different publications, upon account of the scandalously mutilated extracts from them in the libel. You must carry the whole of them along with you from this place. It is not upon detached passages you are to judge, but you must decide upon the whole.

Gentlemen of the Jury;—This is now perhaps the last time that I shall address my country. I have explored the tenor of my past life. Nothing shall tear from me the record of my departed days. The enemies of reform have scrutinized, in a manner hitherto unexampled in Scotland, every action I may have performed, every word I may have uttered.—Of crimes, most foul and horrible, have I been accused. Of attempting to rear the standard of civil war, and to plunge this land in blood, and to cover this land with desolation. At every step, as the evidence of the Crown advanced, my innocency has brightened. So far from inflaming the minds of men to sedition and outrage—all the witnesses have concurred, that my only anxiety was, to impress upon them the necessity of peace, of good order, and of good morals. What then has been my crime? Not the lending to a relation a copy of Mr. Paine's Works; not the giving away to another a few numbers of an innocent and constitutional publication; but, for having dared to be, according to the measure of my feeble abilities, a strenuous and active advocate for an equal representation of the people—in the House of the people;—for having dared to attempt to accomplish a measure, by legal means, which was to diminish the weight of their taxes, and to put an end to the profusion of their blood. From my infancy to this moment, I have devoted myself to the cause of the people. It is a good cause.—It shall ultimately prevail.—It shall finally triumph. Say, then, openly, in your verdict, if you do condemn me, which I presume you will not,—That it is for my attachment to this cause alone, and not for those vain and wretched pretexts, stated in the indictment, intended only to colour and disguise the real motives of my accusation. The time will come, when men must stand or fall by their actions; when all human pageantry shall cease; when the hearts of all shall be laid open. If you regard your most important interests—if you wish that your conscience should whisper to you words of consolation, or speak to you in the terrible language of remorse—weigh well the verdict you are to pronounce. As for me, I am careless and indifferent to my fate. I can look danger, and I can look death in the face, for I am shielded by the consciousness of my own rectitude. I may be condemned to languish in the recesses of a dungeon—I may be doomed to ascend the scaffold—Nothing can deprive me of the recollection of the past—Nothing can destroy my inward peace of mind, arising from the remembrance of having discharged my duty.

[When Mr. Muir sat down, an unanimous burst of applause was expressed by the audience.

When the acclamations had ceased, he arose and said;]

I have omitted to take notice of the evidence adduced upon my part. I am not going to detain you a moment longer.—To you I leave the import of the whole of that evidence.

* With respect to the imputation on Mr. Rowan here alluded to, see Margarot's defence on his trial, in this volume—*post*.

SUMMING UP.

The *Lord Justice Clerk.*—This indictment, gentlemen, is the longest I have ever seen, since I had the honour to sit in this court; and is to be tried by a great number of circumstances. It shall be my business to simplify it as much as I can.

A relevant charge, gentlemen, may be contained in a few lines; but the humane principle on which the practice is carried on, is to state the facts at some length, for the benefit of the prisoner; and on this principle the lord advocate has acted in the present case.

But, gentlemen, although the facts are thus fully stated; it is by no means absolutely necessary to prove the whole, in order to establish the guilt of the prisoner. You have only to look at the concluding sentence of the indictment, which runs thus, "all which, or part thereof being found proven," &c. from which you clearly perceive that you are to consider if as many of the facts libelled are proved to your satisfaction as will establish the general charge.

The question, then, gentlemen, for your consideration is simply this: On the whole of the proof led, when taken in connexion, do you think the panel guilty of sedition or not? Now in examining this question, there are two things which you should attend to, which require no proof. The first is, that the British constitution is the best in the world;—for the truth of this, gentlemen, I need only appeal to your own feelings. Is not every man secure in his life, liberty, and property? Is not happiness in the power of every man, except those perhaps, who, from disappointment in their schemes of advancement are discontented? Does not every man enjoy unmolested the fruits of his industry? And does not every man sit safely under his own vine and his own fig-tree, and none shall make him afraid? The other circumstance, gentlemen, which you have to attend to, is the state of this country during last winter. There was a spirit of sedition and revolt going abroad which made every good subject seriously uneasy. I observed the reflection of the master of the grammer school of Glasgow, who told Mr. Muir, he conceived that proposing reform then was very ill-timed; I coincide in that opinion, and I leave it for you to judge, whether it was perfectly innocent or not in Mr. Muir, at such a time, to go about among ignorant country people, and among the lower classes of the people, making them leave off their work, and inducing them to believe that a reform was absolutely necessary to preserve their safety and their liberty, which had it not been for him, they never would have suspected to have been in danger. You will keep this in remembrance, and judge whether it appears to you, as to me, to be sedition.

You will next attend, gentlemen, to Mr. Muir's conduct at Kirkintilloch, which is to be collected chiefly from the evidence of Johnstone, Weddel, and Freeland. You will observe particularly how he ran a parallel between the French and English constitutions, and talked of their respective taxes, and their causes, and how he gave a preference to the French. You are to judge of the tendency of such harangues. With respect to circulating Paine's book, Mr. Muir has said that it has never been condemned. But, gentlemen, Mr. Muir should recollect, and you must be sensible, that a judgment of a court of law is by no means necessary to make it seditious. It is in itself most seditious, treasonable, and dangerous. Sedition in England, gentlemen, must be sedition here; and sedition here must be sedition in England; and it would be right in forming your opinion to have an eye upon the judgments of the English courts, who have condemned the publication of that work. The other writings mentioned in the indictment are much of the same stamp. I agree in the idea that the passages should be taken with their context. You will do this when you look over them, and have only to recollect a simple proposition, that to render a book seditious, it is not necessary it be all sedition.

Now, gentlemen, the fact is clearly proven, of his having circulated some of these books; it is for you to draw the consequence.

An attack has been made on the young woman, Fisher. But I must confess I never heard a more distinct evidence; and no grudge between her and the family has been condescended on. On the contrary, from her answer to a very proper question put to her by one of yourselves, she appears to have left the family on very good terms.

Gentlemen, the only wish of the prosecutor can be to bring offenders to justice; and he must make use of such evidence as the case admits. Her testimony, however, in several material facts has been supported.

You will next attend to Mr. Muir's behaviour in the convention, when he read the Irish Address. Instead of denying this fact, Mr. Muir has asserted the innocence of it, and enlarged upon its merits. Gentlemen, I cannot help saying, I think it a most seditious and inflammatory paper. You will take it with you and judge of it.

You have next to turn your attention to the outlawry. Running away from justice, gentlemen, must always be considered an evidence of guilt.* Mr. Muir has attempted to set up an apology for his non-appearance; but I would ask, why, at such a crisis, he should go to France? Independently of that, he should have recollected that an embassy to a foreign country, without proper authority, is a species of rebellion. This proves, how-

* See the observations of Mr. Justice Day on the case of Judge Johnson, in the court of King's-bench of Ireland, A. D. 1805, *post.*

ever, that he was supposed to have considerable influence with those wretches, the leading man there, and establishes his connexion with them. And what characters are these? I never was an admirer of the French; but I can now only consider them as monsters of human nature.

As Mr. Muir has brought many witnesses to prove his general good behaviour, and his recommending peaceable measures and petitions to parliament, it is your business to judge how far this should operate in his favour, in opposition to the evidence on the other side.

Mr. Muir might have known that no attention could be paid to such a rabble. What right had they to representation? He could have told them that the parliament would never listen to their petition. How could they think of it? A government in every country should be just like a corporation; and, in this country, it is made up of the landed interest, which alone has a right to be represented; as for the rabble, who have nothing but personal property, what hold has the nation of them?* What security for the payment of their taxes? they may pack up all their property on their backs, and leave the country in the twinkling of an eye, but landed property cannot be removed.

The tendency of such a conduct was certainly to promote a spirit of revolt; and if what was demanded should be refused, to take it by force.

Mr. Muir's plan of discouraging revolt, and all sort of tumult was certainly political: for until every thing was ripe for a general insurrection, any tumult or disorder could only tend, as he himself said, to ruin his cause; he was in the mean time, however, evidently poisoning the minds of the common people, and preparing them for rebellion.

Gentlemen, you will take the whole into your consideration. I now leave it with you, and have no doubt of your returning such a verdict as will do you honour.

The *Lord Justice Clerk* having finished his address about half past one o'clock in the morning of Saturday, the Court was adjourned until 12 o'clock of that day, and the jury were immediately enclosed.

Saturday, August 31st.

The Court again met according to adjournment, when the jury returned the following

VERDICT.

Edinburgh, August 31st, 1793.

The above assize having enclosed, made choice of the said Gilbert Innes to be their chancellor, and the said John Balfour to be their clerk; and having considered the criminal libel, raised and pursued, at the instance of his majesty's advocate for his majesty's interest, against Thomas Muir panel, the interlocutor of relevancy pronounced thereon by the Court, the evidence adduced in proof of the libel, and the evidence in exculpation; they are all, in one voice, finding the panel, Thomas Muir, Guilty of the crimes libelled; in witness thereof their said chancellor and clerk have subscribed these presents, consisting of this and the preceding page, in their names and by their appointment, place, and date aforesaid.

(Signed) GILBERT INNES, *Chan.*
JOHN BALFOUR, *Clerk.*

The verdict being recorded, the *Lord Justice Clerk* addressed the Jury, and said, That this trial had been of the greatest importance. He was happy that they had bestowed so much attention upon it, and informed them, that the Court highly approved of the verdict they had given. He then asked their lordships severally their opinion upon this verdict, and what punishment should be inflicted.

They delivered their opinions as follows:—

Lord *Henderland* observed, that the alarming situation in which this country was during the course of last winter, gave uneasiness to all thinking men: his lordship said, that he had now arrived at the most disagreeable part of the duty incumbent upon him, which was to fix the punishment due to the crime, of which the panel was found guilty. The indictment charges him with sedition, with exciting a spirit of discontent among the inferior classes of people, and with an attack against the glorious constitution of this country; the jury, by the verdict which they had returned, and to which the Court had alone recourse, had found the panel guilty; and it was their lordships only duty, now to fix the punishment due to the offence. His lordship said, that he would not dwell upon the evil consequences of the crimes committed by the prisoner. The melancholy example of a neighbouring country, which would for ever stain the page of history, rendered it unnecessary for him to recapitulate the circumstances of the case. In that country, the consequences of such measures have produced every kind of violence, rapine, and murder. There appeared, he said, to have been in this country a regular plan of seditious measures. The indecent applause which was given to Mr. Muir, last night, at the conclusion of his defence, within these walls, unknown in that high court, and inconsistent with the solemnity which ought to pervade the administration of justice, and which was insulting to the laws and dignity of that Court, proved to him, that the spirit of sedition had not as yet subsided. He would not, he said, seek to aggravate the offence committed by the panel, by the misconduct of his deluded friends, in order to increase the punishment.

* These expressions were animadverted upon with much severity by Mr. Fox in the House of Commons. See in the New Parl. History, Vol. 30, his speech on Mr. Adam's motion, March 10th 1794.

The punishment to be inflicted is arbitrary, of which there is a variety, and we have our choice of banishment, fine, whipping, imprisonment, and transportation. Banishment, he observed, would be improper, as it would only be sending to another country, a man dangerous to any, where he might have the opportunity of exciting the same spirit of discontent, and sowing with a plentiful hand, sedition; fine would only fall upon his parents who had already suffered too much by the forfeiture of his bail; whipping was too severe and disgraceful, the more especially to a man who had bore his character and rank in life; and imprisonment, he considered, would be but a temporary punishment, when the criminal would be again let loose, and so again disturb the happiness of the people. There remains but one punishment in our law—transportation. It was a duty he considered he owed to his countrymen to pronounce it, in the situation in which he sat, as the punishment due to his crimes. His lordship said, I am sorry, it wrings my very heart to think that a gentleman of his description, of his profession, and of the talents he possesses, should be guilty of a crime deserving such a punishment, but I see no alternative. For what security could we have against his future operations, but his removal from this country, to a place where he could do no farther harm? His lordship was therefore of opinion, that the panel should be recommitted to prison, there to remain, till a proper opportunity should occur for transporting him, to such place as his majesty, with the advice of his privy council might appoint, for the space of fourteen years from the date of the sentence; with certification that if he return within that time, he shall suffer death.

Lord *Swinton*.—The crime with which the panel is, by the jury of his country, found guilty, is sedition. It is a generic crime, and which is defined by our lawyers to be "a commotion of the people without authority, or the exciting of such commotion, to the disturbance of the public peace." This crime, he observed, consisted of many gradations, and might have run from a petty mob about wages, even to high treason. He thought the punishment should be adapted to the crime. The question, he said, was then, What was the degree of the crime the panel had been guilty of? That was to be discovered from the libel, of which he has been found guilty by the unanimous verdict of a respectable jury of his country. It appeared to him to be a crime of the most heinous kind, and there was scarcely a distinction between it and high treason. As by the dissolution of the social compact it made way for, so it might be said to include every sort of crime, murder, robbery, rapine, fire-raising, in short, every species of wrong, public and private. This was no theoretical reasoning, for we had it exemplified before our eyes, in the present state of France, where, under the pretence of asserting liberty, the worst sort of tyranny was established, and all the legal and moral ties which bind mankind were broken. Nay, shameful to tell, even religion itself was laid aside, and publicly disavowed in their National Convention.

Certain wicked persons have set on foot in this happy kingdom, the first steps of the same plan under the specious pretences of liberty and equality; assuming to themselves, most falsely and insidiously, the respectable names of Friends of the People, and of Reform, although they deserve the very opposite denomination; by which means they have misled, and drawn after them, a great number of well-meaning, though simple and unwary people.

A most respectable jury has found the prisoner guilty of endeavouring to excite this sort of sedition:—and how did he attempt to explain and justify himself?—By denying seditious intent, and alleging his motives were a desire of reformation, and that the mode he proposed for obtaining it, was a legal, peaceable, and constitutional petition to the House of Commons. But how were these motives reconcileable with the principles in the writings and pamphlets which he justified and circulated? The fundamental doctrine of these books is, that the whole people are in effect to judge of, and direct in every thing, and that to obtain their end, they have only to WILL it. Is not such a reformation a subversion of our wise and happy government? And is a petition of millions of people who have WILLED to have what they pray, a legal, peaceable, and constitutional petition?

With regard to the punishment, I observe, that the maxim, that the severity of punishment ought to be in proportion to the atrocity of the crime, does not hold in our law; for that, with us, punishment is not revenge nor atonement. If punishment adequate to the crime of sedition were to be sought for, it could not be found in our law, now that torture is happily abolished. The sole object of punishment among us is only to deter others from committing like crimes in time coming.

In this view I concur in the proposal that has been made of transportation for fourteen years, which is a mild punishment, considering the offence, and considering the danger of the times.

By the Roman law, which is held to be our common law where there is no statute, the punishment was various, and transportation was among the mildest mentioned. Paulus, L. 38. Dig. de Pœnis writes, 'Actores sedi-'tionis et tumultûs, populo concitato, pro 'qualitate dignitatis, aut in furcam tolluntur, 'aut bestiis objiciuntur, aut in insulam de-'portantur.'—We have chosen the mildest of these punishments.* By the Codex, lib. 9,

* See Mr. Fox's remarks on this passage in his speech in the House of Commons, March 10th, 1794. New Parl. Hist., vol. 30.

t. 30. 'de seditiosis et his qui plebem contra 'rempublicam audent collegere,' l. 1 and 2., such persons are subjected 'ad mulctam gra-'vissimam.'—Baldus writes, 'Provocans tu-'multum et clamorem in populo, debet mori 'pœnâ seditionis.'—And by a constitution of the emperor Leo: 'Subdandos autem pœnis 'eis quas de seditionis et tumultûs auctoribus 'vetustissima decreta sanxerint.'

The crime here, though very near to treason, does not amount to it. The mildest of the punishments for the sedition of which the prisoner has been found guilty is transportation; and I think it is the punishment in this case.

Lord *Dunsinnan*.—His lordship spoke in so low a tone of voice that we had not an opportunity of following him throughout the whole of his opinion. He, however, agreed, with the rest of their lordships, in the punishment which they said Mr. Muir deserved, viz. transportation for fourteen years, with the usual certification, &c.

Lord *Abercromby*.—I think it by no means necessary to say much of the enormity of this crime, after what has been already said. By our old law it would have amounted to treason; and even by the statute of Edward it comes very near it.

Had the panel's speeches produced any riots or tumults, it might have involved him in high treason. This rendered him cautious; for otherwise he might this day have received sentence to suffer the punishment due to traitors.

Another reason why he avoided tumults was mentioned in his speech, that a revolution could only be effected by an insurrection of the general mass of the people; trifling tumults would not answer.

[Here Mr. Muir rose and said—"I deny it, my lord; it is totally false."]

If any thing could add to the improper nature of the panel's defence, it was his pretended mission to France, and the happiness he expressed in the circle of acquaintance he had there. It is evident, that his feelings did too much accord with the feelings of those monsters.—His lordship coincided with the rest of their lordships, in regard to the punishment, which, they had given as their opinion, Mr. Muir deserved.

Lord Justice Clerk.—His lordship said, he was considerably affected to see the panel stand trial for sedition, a man who had received a liberal education, was member of a respectable society, possessed considerable talents, and had sustained a respectable character. The lowest species of this crime is heinous; but when aggravated by creating disloyalty and disaffection to government, it amounts to the highest sort of sedition. It borders on treason; and perhaps it is owing to the humanity of the lord advocate, that the panel had not to stand trial for his life.

His lordship agreed in the propriety of the proposed punishment, and he observed, that the indecent applause which was given the panel last night, convinced him, that a spirit of discontent still lurked in the minds of the people, and that it would be dangerous to allow him to remain in this country. His lordship said, this circumstance had no little weight with him, when considering of the punishment Mr. Muir deserved. He never had a doubt but transportation was the proper punishment for such a crime, but he only hesitated whether it should be for life or for the term of fourteen years—the latter he preferred, and he hoped the panel would reflect on his past conduct, and see the impropriety which he had committed, and that if he should be again restored to his country, he might still have an opportunity of showing himself to be a good member of that constitution which he seemed to despise so much.

After his lordship had delivered his opinion, and during the time the sentence was recording, Mr. Muir rose and said:—

My lord justice clerk, I have only a few words to say. I shall not animadvert upon the severity or the leniency of my sentence. Were I to be led this moment from the bar to the scaffold, I should feel the same calmness and serenity which I now do. My mind tells me, that I have acted agreeably to my conscience, and that I have engaged in a good, a just, and a glorious cause—a cause which sooner or later must and will prevail; and, by a timely reform, save this country from destruction.

The clerk then read the sentence.

The lord justice clerk, and lords commissioners of justiciary, having considered the foregoing verdict, whereby the assize, all in one voice, find the panel Guilty of the crimes libelled: the said lords, in respect of the said verdict, in terms of an act passed in the 25th year of his present majesty, intituled, "An act for the more effectual transportation of felons and other offenders in that part of Great Britain called Scotland," ordain and adjudge that the said Thomas Muir be transported beyond seas, to such place as his majesty, with the advice of his privy council, shall declare and appoint; and that for the space of fourteen years from this date; with certification to him, if after being so transported, he shall return to, and be found at large, within any part of Great Britain, during the said fourteen years, without some lawful cause, and be thereof lawfully convicted, he shall suffer death as in cases of felony, without benefit of clergy, by the law of England: and ordain the said Thomas Muir to be carried back to the Tolbooth of Edinburgh, therein to be detained till he is delivered over for being so transported, for which this shall be to all concerned, a sufficient warrant.

(Signed) ROBERT M'QUEEN.

"In the library of the Antonian monks at St. Sebastian, Rio Janeiro, we were shewn an

English book, presented by Thomas Muir, with the following lines in a blank leaf:

Bibliothecæ
Ordinis Sancti Antonii fratrum
Observantiæ suæ
Thomas Muir, de Hunters hill,
Gente Scotus, Animâ orbis terrarum civis
Obtulit.

O Scotia, O longum felix longumque superba
Ante alias patria, Heroûm sanctissima tellus,
Dives opum, fecunda viris, lætissima campis,
Ærumnas memorare tuas summamque malorum
Uberibus [qu. *verbis*].
Quis queat et dictis nostra [qu. *nostros*] *æquare dolores*
Et turpes ignominias et barbara jussa.
Et nos patriæ fines et dulcia linquimus arva,
Et cras ingens iterabimus æquor.
Civitate Sancti Sebastiani, 23 Julii, 1794.

"We have endeavoured to correct the false Latin which our copyist has made in several instances, but must refer him back to some better copy; and we should have liked to have known the name of the book presented."—Review of an Account of a Voyage to establish a Colony at Fort St. Philip in New South Wales, by J. H. Tuckey; Gentleman's Magazine, April 1805, pp. 337—9.

Respecting this case, see in the New Parliamentary History the debates in the House of Lords, January 29th, 1794; in the House of Commons, March 10th, 1794; and in the House of Lords, April 25th, 1794. See also in this volume the cases of Palmer, Skirving, Margarot, Sinclair, and Gerrald, particularly the last.

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594. Proceedings on the Trial of the Rev. Thomas Fyshe Palmer, on an Indictment charging him with Seditious Practices. Tried before the Circuit Court of Justiciary, held at Perth, on the 12th and 13th September: 33 George III. A. D. 1793.*

Thursday, September 12, 1793.

The Court met at eight o'clock in the morning.

MR. *BURNETT* (advocate depute for the Crown)—the next case I mean to bring before your lordship is that of Thomas Fische Palmer, for seditious practices.

Mr. *Haggart* (counsel for the panel).—My lords, the panel at the bar is Thomas Fyshe Palmer, but the indictment does not apply to that gentleman.

Lord *Eskgrove*,—We must hear first, whether he pleads guilty, or not guilty.

Mr. *Haggart*.—He is not the person, my lord.

Lord *Abercrombie*.—In point of form, the indictment must be read first.

[The Indictment read as follows:]

George, &c. Whereas, it is humbly meant and complained to us by our right trusty Robert Dundas, esq., of Arniston, our advocate for our interest, upon Thomas Fische Palmer, clergyman, sometime residing in Dundee, and commonly designed Unitarian minister: that, by the laws of this, and of every other well governed realm, the wickedly and feloniously writing or printing, or the causing to be written and printed, any seditious or inflammatory writing, calculated to produce a spirit of discontent in the minds of the people, against the present happy constitution and government of this country, and to rouse them up to acts of outrage and violence, by insidiously calumniating and misrepresenting the measures of government, and falsely and seditiously justifying and vindicating the enemies of our country, with whom we are at open war: as also the wickedly and feloniously distributing and circulating, or the causing to be distributed and circulated, any seditious and inflammatory writing, are crimes of an heinous nature, dangerous to the public peace, and severely punishable: yet true it is, and of verity, that the said Thomas Fische Palmer, above complained upon, is guilty actor or art and part, of all and each, or one or other of the foresaid crimes; in so far as, sometime during the month of July 1793, or of June preceding, or of August following, the said Thomas Fische Palmer, having been present at a meeting held at Dundee, and county of Forfar, which meeting denominated itself, "A Society of the Friends of Liberty," or bore some such name, and of which meeting or society, the said Thomas Fische Palmer is or was a member; he did then and there put into the hands of George Mealmaker, weaver in Dundee, a manuscript or writing, of a wicked and seditious import, in the form of an Address to their Friends and Fellow Citizens; which manuscript or writing, was sometime during the months aforesaid, at Dundee aforesaid, or at some other place to the public prosecutor unknown, wickedly

* Of this trial there are two printed accounts; these I have carefully compared, and from them, the report here given is compiled.

and feloniously written or composed by the said Thomas Fische Palmer, or by him caused to be composed or written; and which manuscript or writing, after it had undergone several alterations, suggested by the aforesaid meeting, was, by desire of the said meeting, again put into the hands of the said Thomas Fische Palmer, in order that it might, by his means, be published, printed, and circulated. And the said Thomas Fische Palmer did thereafter print, or at least did wickedly and feloniously, sometime during the months aforesaid, cause to be printed at Edinburgh, or somewhere else to the public prosecutor unknown, the said seditious and inflammatory writing, whereof the title and tenor follows:

Dundee, Berean Meeting House, July 1793.

At a general meeting of the Friends of Liberty, they unanimously resolved to publish the following Address to their fellow citizens.

"Friends and fellow citizens;—You, who by your loyal and steady conduct, in these days of adversity, have shown that you are worthy of, at least, some small portion of liberty, unto you we address our language and tell our fears.

"In spite of the virulent scandal, or malicious efforts of the people's enemies, we will tell you whole truths, they are of a kind to alarm and arouse you out of your lethargy. That portion of liberty you once enjoyed is fast setting, we fear, in the darkness of despotism and tyranny! too soon, perhaps, you who were the world's envy, as possessed of some small portion of liberty, will be sunk in the depth of slavery and misery, if you prevent it not by your well-timed efforts.

"Is not every new day adding a new link to our chains? Is not the executive branch daily seizing new, unprecedented, and unwarrantable powers? Has not the House of Commons (your only security from the evils of tyranny and aristocracy) joined the coalition against you? Is the election of its members either fair, free, or frequent? Is not its independence gone, while it is made up of pensions and placemen?

"We have done our duty, and are determined to keep our posts, ever ready to assert our just rights and privileges as men, the chief of which we account the right of universal suffrage, in the choice of those who serve in the Commons' House of Parliament, and a frequent renewal of such power.

"We are not deterred or disappointed by the decision of the House of Commons concerning our petition. It is a question we did not expect (though founded on truth and reason) would be supported by superior numbers.—Far from being discouraged, we are more and more convinced, that nothing can save this nation from ruin, and give to the people that happiness which they have a right to look for under government, but a reform in the House of Commons, founded upon the eternal basis of justice, fair, free, and equal.

"Fellow citizens:—The time is now come, when you must either gather round the fabric of liberty to support it, or, to your eternal infamy, let it fall to the ground, to rise no more, hurling along with it, every thing that is valuable and dear to an enlightened people.

"You are plunged into a war, by a wicked ministry and a compliant parliament, who seem careless and unconcerned for your interest, the end and design of which is almost too horrid to relate, the destruction of a whole people, merely because they will be free.

"By it your commerce is sore cramped and almost ruined. Thousands and ten thousands of your fellow citizens, from being in a state of prosperity, are reduced to a state of poverty, misery, and wretchedness.—A list of bankruptcies, unequalled in any former times, forms a part in the retinue of this quixotic expedition; your taxes, great and burthensome as they are, must soon be greatly augmented; your treasure is wasting fast; the blood of your brethren is pouring out, and all this to form chains for a free people, and eventually to rivet them for ever on yourselves.

"To the loss of the invaluable rights and privileges which your fathers enjoyed, we impute this barbarous and calamitous war, our ruinous and still growing taxation, and all the miseries and oppressions which we labour under.

"Fellow citizens;—The friends of liberty call upon you, by all that is dear and worthy of possessing as men; by your own oppressions; by the miseries and sorrows of your suffering brethren; by all that you dread; by the sweet remembrance of your patriotic ancestors; and by all that your posterity have a right to expect from you,—to join us in our exertions for the preservation of our perishing liberty, and the recovery of our long lost rights."

Further, the said Thomas Fische Palmer did, some time during the months of June or July aforesaid, wickedly and feloniously distribute and circulate, or cause to be distributed or circulated in Dundee, Edinburgh, and elsewhere, a number of copies of the said seditious and inflammatory writing, printed as aforesaid. Particularly, the said Thomas Fische Palmer did, sometime in the month of July aforesaid, transmit, or cause to be transmitted or delivered, to William Skirving of Strathruddie, residing in Edinburgh, 100 copies, or thereby, of the said seditious and inflammatory writing, to be by him distributed and circulated; and which accordingly, or the greatest part thereof, were by him distributed and circulated. As also the said Thomas Fische Palmer did, sometime in the month of July aforesaid,

deliver to each of Edward Leslie and Robert Miller, both stationers and booksellers in Dundee, a number or parcel of the said seditious and inflammatory writings, to be by them distributed and circulated. As also, the said Thomas Fische Palmer did, on the 20th of July aforesaid, or, upon one or other of the days of that month, transmit to James Smiton, wright in Newburgh, and county of Fife, 20 copies, or thereby, of the said seditious writing, to be by him distributed and circulated; and which accordingly were distributed and circulated by the said James Smiton, among several persons in the neighbourhood. And the said Thomas Fische Palmer having, upon the 2d and 3d days of August 1793, been brought before Harry Davidson, esq. sheriff-substitute of the shire of Edinburgh, he did in his presence emit a declaration, which the said Thomas Fische Palmer having refused to subscribe, was signed by the said Harry Davidson: which declaration, together with seven copies of the above-mentioned seditious and inflammatory writing, whereof three of them attested on the back by the signature of the said Harry Davidson and others; two of them so attested by Alexander Riddoch, esq. provost of Dundee, and others; another of them so attested by Thomas Horsburgh, sheriff-substitute of Fife, and others; and another copy of them attested on the back by William Baine, servant to James M'Duff, shoemaker at Bridge of Turret, and others; together with a manuscript copy of the said seditious writing, attested by the said Harry Davidson, Alexander Riddoch, and others: as also, two pieces, or parts, of two letters, wrote by the said Thomas Fische Palmer, and found in the possession of Alexander Morrin, grocer and spirit dealer in Edinburgh, and attested by the said Alexander Morrin, Harry Davidson, and others; together with the scroll of a letter, seemingly addressed to the said Thomas Fische Palmer, by the said Alexander Morrin, and found in the custody of the said Alexander Morrin, and attested by his subscription and that of the said Harry Davidson aforesaid; together with three other letters, one dated the 3d of July 1793, signed with the initials of T. F. P., and addressed to "Mr. Ellis, at James Ellis's, staymaker, Chapel Shade, Dundee," attested by the signature of the said Alexander Riddoch, and others; another, dated "Dundee, July 9, 1793," signed "T. F. Palmer," and addressed "to Mr. Skirving, opposite Old Assembly Close, Cowgate;" and another, dated 20th July 1793, signed "T. F. Palmer," but without any address, and beginning "my dear friend;" which two last letters above-mentioned are respectively attested by the signature of the said Harry Davidson, and others; as also, a letter, signed "James Ellis," dated "Paisley, March 18," and addressed to "James Ellis, staymaker, above St. Francis's Well, Dundee;" which letter is attested by the signatures of Thomas Farquharson and William Moncrieff, together with a book, attested by the subscription of William Airth, weaver in Dundee, will all be used in evidence against the said Thomas Fische Palmer; and will, for that purpose, be lodged in due time with the clerk of the circuit court of justiciary, before which he is to be tried, that he may have an opportunity of seeing the same. At least, times and places aforesaid, the said seditious and inflammatory writing, was wickedly and feloniously composed and printed, or caused to be composed and printed; as also, wickedly and feloniously distributed and circulated, or caused to be distributed and circulated, in manner aforesaid; and the said Thomas Fische Palmer, above complained upon, is guilty actor, or art and part, of all and each, or one or other of the foresaid crimes. All which, or part thereof, being found proven by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a circuit court of justiciary to be holden by them, or any one or more of their number, in the criminal court-house of Perth, the 18th of September next to come, the said Thomas Fische Palmer ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming. Our will is, &c.

List of Witnesses.

1 James Matthew, weaver in Dundee, and at present or lately employed in keeping a shop belonging to Jobson, Miller, and Company, cotton-manufacturers in Dundee.
2 William Moncrieff, one of the town-officers in Dundee.
3 James Yeamen, baker at Scouring-Burn, near Dundee.
4 William Stewart, weaver in Dundee.
5 David Rattray, weaver in Hilltoun of Dundee.
6 George Mealmaker, weaver in Dundee.
7 Thomas Ivory, watchmaker in Dundee.
8 Mr. Thomas Donaldson, minister of the gospel at Dundee.
9 Edward Leslie, stationer and bookseller in Dundee.
10 Robert Miller, stationer and bookseller in Dundee.
11 Thomas Colvile, printer in Dundee.
12 William Airth, weaver in Dundee.
13 James Ellis, cotton-spinner in Glasgow, at present residing in the house of the said Thomas Fische Palmer.
14 James Ellis, staymaker in Dundee.
15 George M'Intosh, clerk to Hugh Handyside, merchant in Edinburgh.
16 William Middleton, sheriff-officer in Edinburgh.
17 Alexander Morrin, grocer and spirit-dealer in Edinburgh.
18 John Morrin, printer in Edinburgh.

19 William Skirving of Strathruddie, residing in Edinburgh.
20 Alexander Aitchison, student of physic, residing in Canongate of Edinburgh.
21 Alexander Scott, printer in Edinburgh.
22 James Smiton, wright in Newburgh, in the parish of Newburgh, and shire of Fife.
23 James Fisher, schoolmaster at Newburgh aforesaid.
24 John Harroway, innkeeper at Newburgh aforesaid.
25 Harry Davidson, esq. sheriff-substitute of the county of Edinburgh.
26 Joseph Mack, writer in Edinburgh.
27 Alexander Riddoch, esq. provost of Dundee.
28 William Scott, procurator-fiscal of the county of Edinburgh.
29 James M'Duff, shoemaker at Bridge of Turret, in the parish of Monyvaird, and county of Perth.
30 William Bain, servant to the said James M'Duff.

LIST OF ASSIZE.

Francis M'Nab of M'Nab.
Charles Campbell of Lochdochart.
Hope Stewart of Ballechin.
Charles Grant of Kinnaird.
5 Lieutenant Adam Stewart of Cluny.
Robert Stewart of Clochfoldich.
John Stewart of Crossmount.
James Stewart of Derculich.
Alexander Fergusson of Balyoukan.
10 William Stewart, writer in Perth.
James Morison, merchant there.
Thomas Sandeman, merchant there.
Patrick Stewart, writer in Dunkeld.
Daniel Stewart, writer there.
15 John Fisher, writer there.
Thomas Kinloch of Cairn.
David Laird of Strathmartine.
Hercules Taylor, esq. Montrose.
Alexander Ferrier of Kintrocket.
20 John Duncan of Rosebank.
David Anderson of Balgay.
John Ouchterlony, esq. Montrose.
Alexander Lamond, merchant in Montrose.
George Mackie, merchant in Montrose.
25 David Cook, merchant in Dundee.
Robert Miller, bookseller there.
William Robertson, junior, merchant in Arbroath.
William Miln, merchant there.
Gilbert Pennycook, merchant in Brechine.
30 John Smith, junior, merchant there.
The Honourable Robert Lindsay of Leuchars.
Col. John Thomson of Charleton.
James Calderwood Durham of Largo.
James Lumsdain of Innergelly
35 Alexander Duncan of Castlefield.
Patrick Lindsay of Coats.
Andrew Johnston younger of Rennyhill.
Alexander Cunningham of Pitttharthie.
Alexander Wood, merchant in Elie.
40 James Chalmers, merchant there.
John Fair, writer in Colinsburgh.
Andrew Whyte, writer in Crail.
Cathcart Dempster, merchant in St. Andrews.
Robert Key, merchant there.
45 Alexander Bonthron of Edensgrove.

ROB. M'QUEEN.
WM. NAIRNE.
ALEX. ABERCROMBY.

Lord *Eskgrove* — Are you, Mr. Palmer, panel at the bar, guilty of the crimes laid to your charge in this indictment, or not guilty?

Mr. *Palmer*—I am not the person named in the indictment.

Lord *Eskgrove*—And that you plead.

Mr. *Palmer*—Yes, my lord.

Mr. *Haggart*—My lords, the case now before your lordships is of the last importance; it directly relates to the liberty of the press, the most invaluable privilege of a British subject. I wish the part allotted to me in this case had been in better hands: circumscribed in point of time,—from my situation, not having recourse to many authorities,—nothing, but a sense of professional duty, could have induced me to make my appearance now before your lordships.

But, my lords, knowing that I shall receive indulgence from the Court, and expecting, in a case of the magnitude of which the present is, assistance from the Court itself, I come forward, and with confidence, to submit to your lordships, even that, if certain preliminary objections which I shall state are over-ruled by the Court, I shall make out, that the libel is not relevant. Now, my lords, the preliminary objections which occur in this case are two: In the *first* place, to the name, the indictment is laid against the Rev. Thomas *Fische* Palmer. Now, my lords, it is very true that there is in the county of Essex a respectable family of that name, but from that family the panel has not the honour to descend. I can prove, by ample testimony, that his name is *Fyshe* Palmer; the name in the indictment differing in no less than two letters from that of the panel. He is called in the indictment *Fische*; the panel's name is *Fyshe*, differing, your lordships see, in no less than two letters from the name that is in this indictment. Your lordships will observe that, in the middle of the name, there are the letters *sc.**

* "It is a flaw in any indictment, and shall hinder it from being sent to an assize, if it be materially wrong in either the name or designation of the panel; or if it give so general, or so equivocal a description of him, that it does not certainly appear, to what person the charge was meant to apply. Thus, one being indicted under the name of James Bryce *alias* Wight [March 5 and 6, 1619] and

Lord *Eskgrove*—That is, c is brought in which ought not to be there, and there is i in the place of the y.

Mr. *Haggart*—Now, my lords, if there be any one thing more important than another, in the case of a criminal indictment, it is the name of the panel. And, my lords, a variety of decisions have been pronounced by your lordships, in other cases of less importance than this, where objections of a very trifling nature have been sustained; for instance, in the noted case of Deacon Brodie there was an objection sustained to a witness; she was designed *Hibbert*, instead of *Hebbert*; there, there was only one letter different; but in the case even of a witness, which I apprehend to be of less importance than this, that objection was unanimously sustained. I have a variety of other cases which I shall beg leave to mention to your lordships; and it is from a source that I am sure will not be disputed by my brother on the other side; it comes from the fountain where, last session, he and I, under a most respectable professor,* were endeavouring to imbibe the principles of criminal law.

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he objecting that his name is James Wight, and that he never has been known by the name of Bryce; this matter is continued over till another day, and no farther proceedings take place on the charge.

"In like manner, James Stobie and William Berry, are dismissed from the bar [July 21, 1701,] having been indicted under the names of William Scobie and Alexander Berry. In the case of John Watson, James Cantley, and others, [Jan. 20 and 27, 1735,] the objection is sustained for Cantley, that he is not described in the libel by his proper and ordinary designation of *wright in Stirling*, but as servant to John Don, late sheriff-depute of that county. Again, [Dec. 13, 1736,] in a prosecution at instance of Menzies of Culdares, against certain thieves and depredators, it is found to be a good exception on the part of two of them, that they are not described by their proper surname of *Kennedy*, but only by certain Highland nicknames and patronymics, which had occasionally been applied to them. More lately, [Oct. 11, 1797,] a young woman, indicted under the name of *Elizabeth* or *Ally* Duncan, having pleaded and verified with evidence that her name was not *Elizabeth*, but *Alison*, she is found to have a good exception to trial on that indictment.

"In short, all material variations in either the name or designation of the accused; as if he be called John instead of James, or be described as weaver instead of shoemaker, or as residing in Edinburgh instead of Leith, or in Castlehill instead of Canongate; as they may possibly, so are they presumed actually to occasion an uncertainty of the application of the libel, and are the ground, therefore, of an objection in law to the charge. This consequence may sometimes ensue, on the variation even of a single letter, if the name be truly altered by such variation, and made a different name, to vulgar and common apprehension, from that of the panel; as, for instance, by calling him *Blain* instead of *Blair*, *Law* instead of *Low*, *Dawson* instead of *Lawson*, or the like.

"On the other hand, there are many, and more considerable variations than any of these, of which in our practice little account is made; because they are variations of the spelling only or pronunciation of the name, and do not hinder it from being substantially the same name, in the opinion of all who hear it, as that of the accused: for instance, *Darymple* and *Dalrymple*; *Johnston* and *Johnstone*; *Clerk* and *Clark*; *Davidson* and *Davison*; *Robinson* and *Robison*; *Rae*, *Ray*, and *Reay*; *Stuart*, *Steuart*, and *Stewart*. These, and many others that might be mentioned, are only slight and immaterial modifications of names; on which no reasonable, but a captious plea only of misnomer can be founded. It is indeed the genius of the English practice, to observe an extreme and punctilious accuracy in such matters; but I cannot find, that in this respect we have ever been disposed to follow their example, but rather, and I think with as sound a judgment, to disregard such criticisms as unseemly niceties, which serve only to disappoint the course of justice, and to bring the law itself into contempt.

"And here, I may refer to the case of Elspeth Robertson, where an objection of this character was urged without success. On her indictment for child-murder, [Oct. 29, and Nov. 5, 7, 15, 1728,] this woman pleaded, that there is no such name as *Elspeth*; at least, that her name was not *Elspeth*, but *Elizabeth*. The answer was, that *Elspeth* and *Elizabeth* are truly one and the same name; and that under the name of *Elspeth*, letters of exculpation had been issued to her, at her own request. A plea of the same character was moved, and with no better fortune, for Fyshe Palmer, on his trial at Perth for sedition, [Sept. 1793,] on a libel, in which his name was not spelt as above written, but *Fische*."—*Hume's Comm. Tr. for Cr.* Vol. 1, p. 251.

* Mr. Hume.—The following is the statement of cases on this point given by professor Hume himself:—"Respecting the degree of inaccuracy in the name or designation of a witness which will serve to set him aside, nearly the same rule will suit, as respecting an error in the name of the panel himself. A critical and punctilious accuracy is not indispensable; but the citation is void if there be any material variation, such as may possibly mislead or deceive the panel, in his inquiries concerning the individual who is summoned. In the trial of James Gray, [July 11, 1737,] it was held a good objection that a witness was named Thomas *Farm* in the list, who subscribed his name *Fairholme*, which

Now, my lords, in a case which occurred before the high court of justiciary, upon the 29th of August, 1791, there was a person adduced of the name of Law, but it was objected, that there was there a mistake in the name.

Lord *Eskgrove*—Was it in the name of a witness, or a panel?

Mr. *Haggart*—It was the name of a witness, in the case of Smith; the person there was designed *Law*, instead of *Low*; there, there was a difference of but one letter, here there is a difference of two letters. And in a case of the name of Wilson, the same year, there was this objection stated, that the witness was designed *Aderson*, instead of *Anderson*, one letter being omitted; but the objection was likewise there sustained.

Now, my lords, these are four of a variety of cases which might be referred to. But, my lords, in a case of this kind, I don't wish to take up the time of the Court. I would mention, however, that the regulation of 1672 can have no meaning, unless it be, that the proper names, and the proper designations be given. But this I must insist, that the indictment, bearing the name of Fische Palmer, as the panel's name, that is not (as is attested by a certificate under the hands of William Steel Maxey, of Northill, Bedfordshire, taken out of the parish register), the name of the panel, but that his name differs in two letters, as I have already mentioned. But, in addition to this certificate of the panel's name, I have to produce to your lordships, authority of a different kind, if written authority is not sufficient. Mr. Palmer is a man of letters,† and is well known in the

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we often pronounce *Farm* in common discourse. In the trial of Dick and others, [Nov. 24, 1788,] Alexander Menzies was set aside, being designed tailor in *Dundee*, where he did not reside at the time of citation. In the same trial the like objections were sent to proof, with respect to Alexander Macdonald and Ann Vallentine, both described as dwelling in Dundee; but the proof was not sufficient, and they were therefore received. In the trial of Smith and Brodie, [Aug. 27, 1788,] *Mary Hibbut* was challenged, because her name was written *Mary Hubbart* in the list: one of the judges gave his opinion for sustaining this objection, and the prosecutor then consented to dismiss her. In the list for the trial of Tenant and Molyson, [Dec. 28, 1789,] Isobel Lees was described as servant to Alexander Clark; and it was sustained to set her aside, that she was not servant to Alexander Clark at the time of serving the indictment. In Wilson's case, in January, 1790, William Heard designed tenant in Ulston, was in the list of witnesses; and it was held relevant to exclude him, that it was not he who was tenant there, but his brother, to whom he was overseer or servant: but the panel failed to prove his allegation. In the case of William Smith, [Aug. 29, 1791,] a witness was rejected on account of a variation of one letter only; and this with good reason, her name being written Isobel *Law* in the list, instead of Isobel *Low*. The like variation was equally fatal in the above-mentioned case of Wilson, where William Wilson was set aside, being described as residing in *A*nderstonelee, instead of *Ad*derstonelee, the true name of his dwelling-place. Even if the name be right, still it may afford a ground of exception, if the witness either is not designed at all, or not in such a way as to distinguish the individual.

"I will lay before the student some instances also of judgments on the other side; though as to some of them, I think there is room for difference of opinion. In the trial of Janet Riddell for child-murder, [Dec. 29, 1701,] *Marion* Paterson was received though named *Margaret* Paterson in the panel's copy of the list. In the trial of William Smith, [Aug. 29, 1791,] already mentioned, it was objected to William Stoddart, designed 'collier at Stobb-'hill in the parish of Borthwick,' that there was no such place in that parish, though there was in the parish of Newbattle adjoining: this objection was repelled. In the trial of Owens and Collins at Glasgow for murder, [Sept. 20, 1792,] it was objected to Isobel Maccallum, wife of John Maccallum, that her maiden name was Fraser, and that she ought to have been described accordingly. But the answer was justly held to be good, that the individual was clearly distinguished, and that in practice this was an ordinary way of naming a married woman."—*Hume's Comm.* Vol. 2, p. 181.

† Gilbert Wakefield having occasion to notice a criticism by Mr. Palmer, thus speaks of him;—"Sicut verissimè interpretatur T. F. Palmer; vir doctus, ingeniosus, et omni laude cumulandus, οὐ κοσμος εκ ων αξιος· ideòque barbari homines ac nefarii, verè νἱοι απωλειας, Θεῳ μη αρεσκοντες, και πασιν ανθρωποις εναντιοι, ad solitudines Novæ Hollandiæ relegârunt:

——— sed sidera testes
Intendunt oculos."

Silva Critica, P. V. 45.

In Belsham's Memoirs of the Rev. Theophilus Lindsey, I find the following account of Mr. Fyshe Palmer:—

"Among these sufferers, the person on whose behalf Mr. Lindsey was in the highest degree interested, was the Reverend Thomas Fyshe Palmer, a gentleman descended from a respectable and opulent family in Bedfordshire, who having been destined to take orders in the established church, had been educated at the university of Cambridge, and was a fellow of Queen's College. This gentleman, in consequence of perusing the writings of Dr. Priestley and Mr. Lindsey, became a decided unitarian; and being a man of an ardent, active spirit, he devoted himself to the propagation of those principles, which to him

literary world as an author, and I have one of his publications to produce in Court; but if this should not be deemed proper evidence, which I submit to your lordships is the regular and proper evidence, I understand likewise, that the name in this indictment is the name of a respectable and honourable family in Essex, and that the arms of that family, and the arms of the family of my client, are perfectly different.

Mr. *Maconochie.*—Is Fyshe his Christian name or his surname?

Mr. *Haggart.*—I do not answer any questions of that sort.

Lord *Eskgrove.*—Why not?

Mr. *Haggart.*—I submit to your lordship, it is not incumbent upon me to give any information of that kind; the learned gentleman himself ought to be able to answer that question. But the question is unnecessary, as Fyshe is a part, and a material part, of Mr. Palmer's name, in the understanding of the prosecutor himself, otherwise he would not have inserted it at all.

But, my lords, I shall mention another objection before I sit down, which is insurmountable; for, next to that I have already stated, it is an indispensable requisite, that the panel should be served with a true copy of the libel, as laid down by the regulations of 1672.

My lords, I hold in my hand the indictment served upon the panel, and in one part there is a total deviation in words, and in sense. Now I shall mention to your lordships what that is, if your lordships will be so good as desire the clerk to read the first paragraph of the hand-bill.

Lord *Eskgrove.*—If there are any witnesses here for or against this gentleman, they are desired instantly to come into the place appointed for them; and if they remain here after this notice, they will be committed to prison; and they will have time to consider of it before they get out of that prison.

[The clerk read.]

'Friends and fellow citizens,—you, who by 'your loyal and steady conduct in these days 'of adversity, have shown that you are wor-'thy of at least some small portion of liberty, 'unto you we address our language, and tell 'our fears.'

Mr. *Haggart*—Now, my lords, in the copy served upon the panel, it is, 'unto you we ad-'dress *your* language;' totally different in words, in sense, and in every difference that I can possibly conceive. If they were their own words that they were addressing to them, this panel could not have been brought to your lordships bar for addressing his words; but it is unnecessary to illustrate,—the thing itself is so obvious to any body who understands the English language, or the language of Scotland, that I am sure it will not be argued on the other side, that there is not a pointed, a clear, and indisputable variation.

And, my lords, upon that ground, I do submit to your lordships, that it is impossible that this indictment, in the first place, can apply to the panel at the bar; or, if that objection should be got over, that that impropriety, that capital mistake in the word *your*, instead of *our*, ought undoubtedly to cast this indictment.

Mr. *Maconochie.*—My lords, I cannot hesitate a moment in presuming your lordships will find the objections to this indictment deserving no serious consideration. This trifling deviation in the spelling cannot possibly be of any consequence, when the pronunciation is exactly the same, for, although Mr. Haggart had strained his voice to the utmost pitch, I do not believe he made the pronunciation the least different; and as far as my powers of pronunciation go, I cannot find any possibility of making a distinction; they appear to be pronounced the same. We cannot suppose the public prosecutor could have corresponded with Mr. Palmer so as to have the opportunity of knowing the precise letters he used in spelling his name; he had spelt it so as exactly to hit the pronunciation, which is not in any degree affected by the difference. And it would be a strange thing, if the public justice of the country was to be disappointed, merely because a gentleman chose to spell his name in a particular way.

The learned gentleman had adduced cases indeed, and those from *very great authority*, his own manuscript notes! but they do not affect the case in point, and, my lords, I think it is hardly necessary to make any observations as to them.

In the first case cited, they were two different names; Low and Law are as different names as can be conceived; and when the panel was desired to inquire after a witness of the name of Law, he was put upon a false scent. I should therefore suppose that, in the case of a witness, there can be no doubt but that was an improper designation; and

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appeared scriptural and evangelical. In the year 1792, he was preacher of the unitarian doctrine in Scotland, where his official labours were chiefly employed in the town of Dundee, in which a considerable society of unitarian worshippers had been formed, by the united exertions of himself, Messrs. Christie, Millar, and other respectable inhabitants. Mr. Fyshe Palmer was a man of excellent understanding, unimpeachable morals, and of great simplicity of character; and being a zealous friend to liberty, and upon all occasions ardent, he, perhaps inconsiderately, was concerned in the republication of an Address to the People of Scotland, concerning the reform of parliament; for which, in the autumn of 1793, he was tried by the circuit court of justiciary."—*Belsham's Memoirs of Lindsey*, p. 351.

Boswell has recorded the particulars of an interview between Dr. Johnson and Fyshe Palmer, in his Life of Johnson, vol. 3, p. 381.

in the case of a panel, the name being perfectly different would be a sufficient ground for the objection being sustained; but where is the difference here?—There seems none.

Mr. Haggart's second objection is still more insignificant, suppose the prosecutor was to pass from the erroneous line altogether,—I suppose that is not the passage in the indictment upon which he wholly relies; but they do address language, which language is circulated, and forms the gist of the indictment. This would introduce strange doctrine into the court, that an indictment should be rendered ineffectual for such an evident, trivial, and unmeaning error in transcribing. The spirit of the law aims at substance, not merely at words.

Mr. *Burnett*.—My lords, I have only to add to what has been now so properly stated, that the objection, which has just been urged by the counsel for the panel, resolves itself into this not that there is any error in the designation of this man, not that there is any doubt to whom this indictment applies, but the objection that has been urged is, that there is an error in two letters in the christian name of this panel. It happens that the prosecutor has spelt it Fische, in place of what Mr. Palmer now chooses to say it ought to have been. In what situation does this gentleman appear at the bar? There are productions here, which I shall have occasion to state to the jury as written evidence, in which he has written his name T. F. Palmer. This gentleman, so long as he has been in this country has not favoured us with spelling his name;, he pleads that we have not spelt his name right; it was utterly impossible for the prosecutor to know what was his christian name when he wrote it in that manner. Had we erred in the proper name of this man, had we erred in his designation, then it would not appear to whom the indictment applies; but this is an error in a small addition which he has chosen to give to the name of his family. I understand his proper name and family is that of Palmer. Indeed different modes of spelling names are very common. Now, suppose this gentleman's name had been Stewart, some spell it with a w, and some spell it with u; suppose his name had been Stewart, and he had been used to spell his name with the w, I submit to your lordships, it would not have been a valid objection to this indictment, that it was spelt Stuart; but my lords Fyshe is the mere christian name of this man; it is not his proper name, it is not the name of his family. And, my lords, I could adduce many names in like manner; Smith, Smyth; Millar, Miller; Abercrombie, Abercromby; Burnett, Burnet.

My lords, another objection (but which is so trifling as scarcely to require an answer) is, that the record copy of the indictment differs from that served upon the panel. Had the record copy charged him with murder, and had he been served with an indictment charging him with sedition, such an error would materially affect the cause. Here the difference is of no consequence.

Under these circumstances I submit, your lordships cannot listen to the objections, there being no material deviation; and though by the law of England, which does very often give effect to matters of form, and often leaves out the substantial part of an indictment of this kind, they might be sustained, yet the law of this country, which does not follow that of any other country, disallows them.

Mr. *Haggart*.—My lords, the answers which have been made by the counsel for the Crown, are such as I expected; as they had no sufficient answer to give me upon principle, they took the liberty of stating their own opinions, and pretty strongly their own averments, in opposition to my authorities; my authorities stand as they did, their opinions will not alter them.

As to what has been said by Mr. Maconochie, of the pronunciation being the same no attention can possibly be paid to it, since if pronunciation were to regulate judicial accuracy, that procedure would vary with every different dialect, and be extremely inaccurate. It is impossible that gentleman can himself be serious in maintaining such a proposition, and at any rate it can never be adopted.

As to the attack which Mr. Maconochie has made on my tone of voice I did not expect the time had been just yet come when I was to have been indicted on that head, much less could I have expected Mr. Maconochie would have been the indicter.

The observation of the advocate depute, that the precision of the designation ought to do away the inaccuracy of the want of two letters, is of as little weight as that of his assisting counsel; both name and designation ought to have been correct.

My lords, the learned gentleman has said, that Mr. Palmer, in his practice of writing his name, had only written, T. F. Palmer; that is a mistake, and I did not expect it to have been stated; for he must know that, when this gentleman underwent a formal examination, he did spell his name at length, Thomas Fyshe Palmer. In the publication that I hold in my hand, it is spelt in the same way; let them deny that fact if they can.

My lords, the name of Fyshe is the proper name of his family, and I will tell your lordships, though I am not bound to tell the public prosecutor; that this gentleman's father was the first who changed his name from Fyshe to Palmer; so that I do submit to your lordships my objections stand unconfuted; and I do trust they will be attended to by your lordships in an important case of this kind.

Lord *Eskgrove*.—If the panel had not been properly served with the indictment the error is material. We have, in this country, as fair a mode of trial as any in the world, and any real objection would certainly be sustained. But if the first objection be sustained, what

is the consequence? only to postpone his trial fifteen days longer, till a new indictment could be served; and he would be committed to prison, so that it is a mere matter of moonshine which can serve the panel no good purpose. With respect to the merits of the objection, the instances that have been given were only those of witnesses;—witnesses are brought into court to give evidence for, or against a party, the trial is commenced before they come, and there is no such thing as postponing the trial, if he is not properly brought before the court; and when a man of the name of Thomas is called as a witness, and his designation is James, he is a person not summoned; and the law will not allow a man to volunteer, to come and give evidence, he is compelled to come; that would be a final decision of the matter, and the trial must go on, So that the greatest attention is necessary in the summoning of witnesses. Not one of these objections meet the present case, which is that of an alleged error in the name of the person brought before the Court, which if sustained, would only answer the purpose of a few days delay. But even were they cases of the same nature, and were they objections to the panel, instead of to witnesses, they would none of them meet the present case. In this case the identity of the panel is proved both by name and designation. In the case of Brodie I had the honour to sit upon the bench; there, it was the case of a man whose name was known to all the people there, to be a different name from that by which he was designed; and the families were well known to be as distinct as the names and families of any two gentlemen in this court. Every man in court knows the material difference between the names of Low and Law. We have heard of the famous Law who went from France to the Mississippi, and we know him to be a different man from provost Low of Brechen. If this objection were sustained, inexplicable difficulties would occur in the practice of our courts. I know of Stewarts, my own relations, who differ from one another in the spelling of their name, as Mr. Burnett has mentioned. If a person wrote the name of Stewart as applicable to the office of steward, and thought it afterwards better to call it Stuart; and an indictment was to come against him by the name of Stewart, and it had been objected to, would it not be a strong answer to show that the name was formerly Stewart? In this case is not the pronunciation exactly the same? Nay is not the pronunciation of y and i in such cases very generally alike? whether Mr. Palmer spells his name with a y or an i, still is he not a *fish*? Your lordship's own surname is often wrote by persons with a y at the end of it, instead of ie; and the same with my own name, some, particularly in England, spell my name Ray, some Rea, and others Rae, and yet no man would hesitate to say they meant the same; therefore this objection is not at all applicable to the case; the public prosecutor has named him right in pronunciation at least, and Mr. Haggart mentions no person of the same name by whom a mistake could possibly happen; he has brought us no person of the name of Fische Palmer who also resides in Dundee, and is an Unitarian preacher; and if there was any error at all, I must look to the indictment; and when I see a variety of writings produced which are all signed T. F. Palmer, I must hold it as full in evidence, that these are his writings, in which Palmer being the principal name, T. F. is sufficient, to be sure; but that does not show whether it is written with an i or a y.

There is another circumstance that is remarkable, and that is, that there was a declaration taken before the sheriff of Edinburgh, when this gentleman was called to answer questions put to him, and after it was taken down, he thought fit to refuse to sign his name, perhaps with a view to this objection.

Mr. *Haggart*.—He was illegally apprehended, my lord.

Lord *Eskgrove*.—Illegally! He was brought there legally for examination; and his refusal to sign appears to me rather to favour the supposition that he did so in order to introduce this quibble. It is no sign of innocence when a panel refuses to sign his name. But farther, your lordship knows that, under this name of Thomas Fische Palmer, when brought before the sheriff, he found bail; and if he was not the person, why is he here? He is here to answer to the name of Thomas Fische Palmer, and he acknowledges himself to be the person by coming to this bar; I do not find fault with gentlemen in every case for making objections, far from it; but I am perfectly clear there is nothing in this objection.

I may add, that even were it necessary to have evidence upon the manner in which he spells his name, such certificates as that produced, brought we know not whence, nor from whom, could not be admitted; far less his name on the title of this publication of his, denying the Divinity of Jesus Christ—whether that is his publication or not I do not know, he is not impeached here for denying the Godhead of Christ.

With respect to the second objection, there is no error either in the allegation of the crime or the narrative, but merely in transcribing the hand-bill libelled in omitting the letter y. But this is not to be founded upon; it is an evident error, and makes the reading nonsense; and even should this copy be erroneous, how will they get over the printed hand-bills themselves, which are lodged with the clerk of the court, agreeable to form?—My lord, I therefore think that, upon the whole, there is as little ground for this objection as for the first.

Lord *Abercromby*.—I agree with your lordship in the observations that your lordship has made. Had Mr. Palmer been called as a witness upon the trial of another person, and

had he been called Thomas Fische Palmer, and properly designed a Unitarian minister, I think it would be no objection to his being received as a witness, though there was the most satisfactory evidence of a disconsonance in spelling the name of Fyshe.

With regard to the second objection, it is a mere recital in the indictment, of the publication libelled, that does not affect the charge against him in any respect; and more especially, as the original copies of that publication are referred to in the indictment and produced: I am free to say there is no ground for the objections.

Lord *Eskgrove*.—Now, Mr. Palmer, these objections being repelled, I ask you again, Are you guilty, or are you not guilty?

Mr. *Palmer*.—I am not guilty, my lord.*

Mr. *Haggart*.—My lords, in what I am farther to take the liberty of stating to the Court, I hope I shall meet with the approbation of both your lordships. I certainly did not mean to state any thing that was not of importance, and if I have erred it is because I conceived it to be my duty to my client. My lords, the preceding objections being overruled, I now come to the objections which occur to the relevancy of this indictment; and, my lords, in arguing upon the relevancy, it is necessary to state the facts as taken for granted, which is labouring under a very great disadvantage; and, if in any case it is so, it is peculiarly so in this, when instead of my client being the author of the hand-bill, he does not bear that character. But, taking the facts as they are stated in this indictment, it comes now to be considered by your lordships, in the first place, Is this indictment accurately and properly laid? Secondly, supposing it to be accurately and properly laid, is the publication arraigned in that indictment libellous and seditious; yea or no? And I hope I shall succeed in showing your lordships, in the first place, that this indictment is not accurately laid; and, in the *next* place, that the crime laid upon the face of that indictment (supposing its accuracy), cannot infer any punishment, or the pains of law.

My lords, I need not tell your lordships what great sticklers for liberty have been our forefathers; and so scrupulous have they been, that there should be no infringement of their established right and invaluable privilege of trial by a jury, that though, in every other instance, they permitted form to give way to substance, yet, so zealous sticklers have they been for this bulwark of their liberty, that they permitted no innovation to be made. The same essentials which are laid down in the 80th chapter of the *Quoniam Attachiamenta*, as requisite in a criminal indictment, are at this day held requisite. From the most remote period that we can trace in criminal libels, the syllogistic form has been adhered to; and, excepting one solitary trial, where the contrary practice took place, there is no one instance to be found of the form being departed from. Now a syllogism consists, as your lordships well know, in a major and minor proposition; the major proposition must contain, what is the crime that is meant to be charged; the crime is set forth in the major proposition, and the facts charged in the minor proposition must make out that crime which the major sets forth.

Now, my lords, allow me to call your lordships' attention to the major proposition in this indictment; and let us see what the crime is that is there stated. The words of the major proposition are,—"Whereas by the laws of this and every other well-governed realm, the wickedly and feloniously writing or printing, or the causing to be written and printed, any seditious or inflammatory writing, calculated to produce a spirit of discontent in the minds of the people against the present happy constitution and government of this country, and to rouse them up to acts of outrage and violence, by insidiously calumniating and misrepresenting the measures of government, and falsely and seditiously justifying and vindicating the enemies of our country, with whom we are at open war; as also, the wickedly and feloniously distributing and circulating, or the causing to be distributed and circulated, any such seditious and inflammatory writing, are crimes of an heinous nature, dangerous to the public peace, and severely punishable——"

Now, your lordships will see what all this is pointed at; it is directly and positively said, that the seditious writings here alluded to, must be calculated to inflame the minds of the people against the happy constitution and government of this country. Now, allow me to call your lordships attention to what is stated in the minor proposition, which I suppose, for I can see nothing else stated, is this hand-bill. It is said, this hand-bill is an attack upon the constitution of this country. My lords, I deny that there is any attack upon the constitution of this country from the beginning to the end of it. I say, the most perverse imagination cannot discover it. I say, here is a free animadversion upon the measures of government. I say, there is a censure upon the House of Commons. I say, there is a censure upon the executive government; but shall I be told, that that is the constitution of this country? I say, that the constitution of this country is founded in King, Lords, and Commons; and I say, there is not in this paper any insinuation tending to overthrow, or insinuating an attack upon the constitution of this country, as so constituted. I will afterwards show, that the whole intention of this was, to obtain a parliamentary reform; but, in the present stage of the argu-

* While Mr. Palmer seemed rather to hesitate, Mr. Clerk, one of his counsel, called out to him to say not guilty. Mr. Clerk's conduct was disapproved by the Court. *Orig. Edit.*

ment, it is sufficient for me to say, that the prosecutor has failed to make out, in the minor proposition, the charge contained in the major. He ought to have stated other facts, whether true or false, in order to have supported the major proposition; he ought to have stated, that my client wickedly and seditiously meant to overthrow the House of Lords; but there is nothing of that kind stated; and therefore I submit to your lordships, that the minor proposition can never apply to the major proposition, which is here set forth. The syllogism is not complete; and unless the Court is, in this instance, to dispense with the best established form known in the law of this country, it is impossible that any trial can proceed upon the present indictment.

But, my lords, as I have said, I hold it to be my inherent right, and it is the inveterate practice of this country, to censure severely the ministry, or any one department of government. These censures will be the means of removing ministers if they are bad.

My lords, holding, therefore, that such censure is not only not blameable, but that it is highly praise-worthy, that it is highly meritorious in any individuals, who think they are injured by any thing under which they labour, to tell their fears and alarms;—yet if, on the contrary, they should exceed just bounds, if they should go to excess, if they should use unwarrantable language, and it should please the public prosecutor to come forward, and say, you are guilty of using improper and unwarrantable expressions; it follows, from the very nature of a criminal trial, that it is requisite, that it is necessary, that the panel be put in possession of those facts, which are meant to be brought home as criminal against him. No man, who sits down to write, can write under the lash of an imprimatur or a licenser; and, though inaccuracy of expression, or too much liberty, may be used in one paragraph, yet, if the whole is meant for a laudable purpose, there is no precedent to show that that has been found fault with; but, when a criminal charge is brought by a public prosecutor, it is incumbent upon him, to put the panel in a situation to know what he is to answer; and, if it were necessary to illustrate, what has passed in this case already affords a strong proof of the expediency of the measure.

The paper which is arraigned, has already been admitted not to be altogether libellous; or, at least, the senior counsel for the Crown has said, that there was one passage which *he imagined* was not to be founded on. If so, I say, the public prosecutor was called upon, by his duty, especially to point out those passages, or innuendos, as they are called in England, upon which he meant to draw his conclusion, that the publication was libellous. Without this, the panel could not possibly shape his defence to meet those particular passages which, at the time of trial, the prosecutor might choose to select. This the public prosecutor has totally failed in doing. Here no one passage, more than another, is pointed out; but the panel is brought to your lordships bar upon the whole of that hand-bill; and is most improperly called upon, not only to vindicate what is wrong, but to justify what is admitted to be right. I say, that this is not a precision, and this is not an accuracy that is agreeable to the usual forms of this Court; it is totally adverse to the practice in England, as your lordships well know; and I am not out of rule in applying to the law of England; for the law of England and the law of Scotland are happily now the same in these particulars. If, however, this inaccuracy is also to be got over, I trust I shall be entitled, as well as the prosecutor, to take advantage thereof, in the remaining and most important objection.

But, my lords, on the supposition that I should be so unfortunate, which I shall not, as to fail in satisfying your lordships that there is not here a complete syllogism; and, in the second place, although I should have failed in satisfying your lordships, that the prosecutors have only given me a paper, containing confessedly matter that is not libellous, intermixed, as he will aver no doubt, with matter that is libellous, and upon which he means to found; I say, though I should be so unfortunate as to have those objections over-ruled, yet my lords, may I entreat your serious attention to what I am now to state, and that is that, taking the whole scope of this hand-bill (and my client must have the same right which the prosecutor has of taking no particular passage, but a complex view of the whole that is written)—I take upon me to say, that any person who will deliberately read it will be satisfied in his mind, will not hesitate to declare, that the whole scope, and the whole burthen of this publication is to recommend another petition to parliament, as the petition which had been presented was refused. And on calling to recollection for a moment the general opinion which for a long time has been prevalent, of the necessity of a parliamentary reform, and what has been the general tenor of many petitions presented to the House of Commons for attaining that object, who can doubt that the object of the paper in question was entirely directed to that end? It is addressed wholly to those of a *steady* and *loyal* conduct, and expresses fears and alarms. It details a list of grievances, suggests "a reform in the House of Commons, founded upon the eternal basis of justice, fair, free, and equal," and calls on the friends of liberty, to join in the recovery of "their long lost rights." But is there any thing in all this which can be termed libellous? It is true that the language is, in particular passages, firm and nervous, and in one passage the grievances may perhaps appear exaggerated, as in another the fears, it is hoped, are

ill-founded. But what then? Those very fears show the determined attachment of the Berean Association to the constitution and government; and the particular expressions made use of, as immediately will be shown, are such as immemorial custom and the best authorities support. In writings of any kind, if particular passages only are selected, it is an easy matter to find out the appearance of exceptionable matter; as any person may satisfy himself, by taking to pieces any part of a political work. But as the liberty of the press abhorred the lash of an imprimative's rod, it was from the whole scope of a writing, explained by the time, place, and circumstances and impression under which it was written, by which alone it was to be interpreted. In arguing on the relevancy as I now am, I am obliged to suppose my client the author of the publication in question, but it will this day appear (if the evidence shall be adduced) who the real author is. It will appear that this publication was composed of detached sentences eked together from newspapers, the production of a journeyman weaver copying what had been said before by his betters, who by this very harmless, or certainly well meaning occupation, is supposed very seriously to have assailed our constitution and government.

I have admitted that the publication in question contains some strictures and animadversions on the House of Commons, and implies censure on the conduct of the executive government: but who can maintain that this is not warranted by the liberty of the press, and by the first principles of our government? Who can deny that the custom is immemorial and inveterate? But censures are not only not blamable, but are praiseworthy and meritorious. They compel unworthy representatives and bad ministers to become good, or pave the way to removal or punishment, if they continue to be bad.

But farther, not only is the general scope not objectionable; even if the apparently most exceptionable passages were to be culled, my client would not commit himself by saying they are warranted by the liberty of the press, as defined by very high authorities; and of much stronger language he certainly can point out, both in parliament and out of it, innumerable examples: and in that case, the consequence will be, that your lordships must dismiss the libel as not relevant. If your lordships have a printed copy of this hand-bill, I hope your lordships will be able to follow me in the observations I shall have the honour to make.

This hand-bill sets out with "Friends and fellow-citizens" — It bears that "At a general meeting of the Friends of Liberty, at the Dundee Berean meeting house, they unanimously resolved to publish the following Address to their friends;" and I am entitled to say, that these associations have precedents, and precedents of the higher sort, as I will by-and-by take the liberty of mentioning to your lordships. At this meeting house, a society, consisting of a number of respectable people, of the middling classes of society, of manufacturers, mechanics, and others, was held in the town of Dundee; and the members of this society wished not to be behind others in showing, that they were zealous for the joint cause, which your lordships know was a more equal representation in parliament; whatever their ideas may be upon that subject, I would not undertake to defend them, but those people have the same claim to suffrage, as burgesses, as I, and I believe a majority of landholders in Scotland have, when we contend that 100*l.* Scots in land ought to be the qualification, and which, at this moment we are all associating and petitioning for and expect. I have declared that 100*l.* is my minimum; that I would be satisfied with trying that experiment. I have been endeavouring, for years, to bring down that to be the opinion of the inhabitants of Perthshire; and though there are perhaps one half of them of opinion, that it ought to continue, I hope there is nothing seditious in that.—"You, who by your loyal and steady conduct in these days of adversity, have shown that you are worthy of at least some small portion of liberty, unto you we address our language, and tell our fears."—My lords, there is surely nothing seditious in this, but the most loyal and steady attachment to the constitution. Can a more chaste exordium be imagined for the purpose, for which they were assembled? They had petitioned parliament, but their petition was refused, and their purpose was, to rouse up others to join them in a second petition, by whose united efforts they hoped their petition would be received, and as they believed (whether right or wrong is of no consequence) the constitution would be saved. The pen of a Cicero or a Demosthenes might have copied this; and I will show your lordships that a great deal of pains has been taken to collect these passages together, and that nothing can be more foreign from sedition than what these people had in view.

"In spite of the virulent scandal, or malicious efforts of the people's enemies, we will tell you whole truths, they are of a kind to alarm and arouse you out of your lethargy. That portion of liberty you once enjoyed is fast setting, we fear, in the darkness of despotism and tyranny! Too soon, perhaps, you who were the world's envy, as possessed of some small portion of liberty, will be sunk in the depth of slavery and misery, if you prevent it not by your well-timed efforts." The fear which is here expressed, I hope as much as any one is ill-founded; but what then? There is surely nothing seditious in expressing fear: on the contrary, does not this strongly mark the attachment of the association to the constitution? If they had not had a sincere attachment, they could have had no such serious fear. If too there was really sedition

in expressing their fears, is not the whole passage guarded by the word *perhaps*? It must be unnecessary to enlarge further on this passage, as it is impossible to be maintained that there is any thing like what ought to be construed sedition in it. Is there the shadow of any thing like overturning the constitution, or resisting any established authority?

Then go to the next paragraph, and you will see upon what these fears are founded; here is another enumeration of grievances, and I will show your lordships authorities for it, and I will show your lordships the origin of it—"Is not every new day adding a new link to our chains? Is not the executive branch daily seizing new, unprecedented and unwarrantable powers? Has not the House of Commons (your only security from the evils of tyranny and aristocracy) joined the coalition against you? Is the election of its members either fair, free, or frequent? Is not its independence gone while it is made up of pensioners and placemen?" Now, your lordships will attend to what is the burthen, and what is the scope, the intention, the clear and undoubted intention of this hand bill, and the grounds upon which these alarms, whether just or not, are founded.—"We have done our duty, and are determined to keep our posts, ever ready to assert our just rights and privileges as men, the chief of which we account the right of universal sufferage, in the choice of those who serve in the Commons' House of Parliament, and a frequent renewal of such power."

"We are not deterred or disappointed by the decision of the House of Commons concerning our petition. It is a question we did not expect (though founded on truth and reason) would be supported by superior numbers.--Far from being discouraged,"--by what? by the rejection of their petition, surely,—"Far from being discouraged, we are more and more convinced that nothing can save this nation from ruin, and give to the people that happiness which they have a right to look for under government, but a reform in the House of Commons, founded upon the eternal basis of justice, fair, free, and equal." Is this a libel upon the constitution? I say, there can be no words better adapted; they are forcible, and the occasion required an energy of expression to rouse the lethargic to that measure, which it appeared to this meeting to be proper to take; they might be erroneous, but I say they had a right to hold out these opinions, as well as a Locke, or a Hume, or any partizan that ever wrote, or may write, or may hereafter exist. I might go over the rest of this paragraph, but allow me to cull and select out of this hand bill those passages which must be the most libellous, if there be any libellous matter here, and allow me to call your lordships attention to the source of this libellous matter, if it is libellous. Your lordships will then attend to the first sentence which I take for granted cannot be libellous.—"You who by your loyal and steady conduct in these days of adversity, have shown that you are worthy of, at least, some small portion of liberty, unto you we address our language and tell our fears." Now, then, follows a catalogue of the grievances on which those fears and those apprehensions are founded. "Is not every new day adding a link to your chains?" The obvious meaning of this passage, must also supersede the necessity of enlarging upon it; it is the common cant expression for new taxes, extension of the excise laws, or new burthens of any kind, and is surely very harmless. Now in the situation of this country, we have no reason to expect that these burthens will not be accumulating; the very expensive war in which we are engaged will necessarily increase that expense, and every subject of this country is permitted to have an opinion as to the necessity or impropriety of a war; that is the common, and what I take to be the obvious meaning of it; and I dare say the author of this paper, whom your lordships will have occasion to see before you, will tell you the same.

Then, my lords, if the explanation that I have given of these words should be said not to be a just one, why, my lords, I find in a newspaper a farther illustration of it. I don't say it is my opinion of the matter, but I find other people think of chains more grievous than those of accumulating taxes. The associators at the Berean Meeting-house, had perhaps other fears suggested to them by the speech of a very able and respectable member of parliament, Mr. Michael Angelo Taylor, in the House of Commons, inserted in the Star of the 23d of February last, where he very forcibly points out the inexpediency of the plan which was then in agitation, of erecting barracks all over the kingdom. He said, that, "in the present temper and disposition of parliament, any motion coming from that side of the House on which he had the honour to sit, no matter how constitutional, he had no doubt would be met with the epithets of seditious, factious, and inflammatory. Such had been, indiscriminately, applied to every motion brought forward by those gentlemen with whom he had the honour and happiness of acting. In the present case he did not suppose that recourse would be had to the stale assertion, that he and his friends were the advocates of France, because they opposed the most unconstitutional measure that ever threatened the liberties of a free country. He spoke as the advocate of Englishmen, and supported those ancient prejudices and jealousies, which, time out of mind, they have manifested with respect to a standing army. What could be a question of greater import or magnitude than to see a large army raised in the heart of the country, and barracks erected, to select and separate the soldiery from the great mass of the people? At the late hour at

which he rose, he did not wish to enter into a large field of argument, however copious or fertile the subject. On the subject of standing armies it would be still more superfluous, when it was imprinted on the heart of every true Briton, that no country, which suffered a large standing army to exist, long boasted the name of freedom. No man, however great a sceptic in politics, would have rashness or folly to oppose this doctrine. No nation ever lost its liberties, but by an armed banditti. The same army that elected Cromwell lord protector, afterwards placed Charles the second on the throne: there was no reliance to be placed on the military the moment they got the upper hand of the people. The military had been always, and ever should be watched with a most jealous eye. Impressed with the impolicy of encouraging a standing military force, it was stipulated, in the Bill of Rights, that no army should be raised without the consent of parliament, for, if once that was not the case, parliament should shut up the doors of the House. During the present reign, the standing army had been much the same; but since the reign of queen Anne, it had augmented to the number of 18,000, a number by much too large.—He reminded the House that if they did not agree to his motion, that a great augmentation was meditated in the peace establishment. He had seen, he said, a letter from the secretary at war to the gentlemen appointed to raise independent companies. The letter was of great publicity, and declared, though the war did not proceed, the captains were to proceed in raising the complement of men required. To smooth their conduct, ministers say we have no cause for apprehension in the military, as we may place the most implicit faith in the officers. It would be invidious to say, that he would not trust the officers, but the nature of the service rendered them obedient to the Crown, they looked up to the Crown for promotion, and therefore as an augmentation of the army was adding to the prerogative of the Crown, in a constitutional point of view he could not accept of the confidence, which it is said ought to be placed in military gentlemen, as a sufficient apology for the conduct of his Majesty's ministers. That the prerogatives of the Crown were not augmented by an augmentation of the army did not admit of debate, for we have recent instances where officers have been struck out of the list of the army, without ever being called to a court-martial, merely because it was supposed that they held opinions inimical to administration. It would, he had no doubt, be argued on the opposite side, that a mutiny bill must take place annually. It was happy for the country it was the case in times like the present, and when it was next brought forward he would make some objections, which he defied the House in its candour to resist. Before he submitted his motion to the House, he would state the grounds on which he proceeded. The army estimates, and its augmentation were generally voted in a thin House, and no satisfactory reason was scarcely ever given for the measure. Why was a standing army admitted in a free country? merely because there was a connexion subsisting between the soldier and the citizen, that rendered it impossible for the military to carry into effect any measure repugnant to the constitution, or the liberties of the country. Blackstone bore him out in this assertion, which was strengthened by the arguments of Mr. Pelham, Mr. Pulteney, and other great men and eminent politicians. Mr. Hurdy, in 1748, arguing against an augmentation of the army, asked the House, 'What would be the object if the troops were 'drawn from their quarters? If they were not 'continued to be quartered on publicans, barracks would instantly be erected. This would 'lead to a despotic government, and that 'friendship contracted between the citizen and 'the soldier, would by their being denied a 'friendly intercourse, turn into dislike and 'hatred. They would, thus disposed of, begin 'to look upon themselves as masters, and 'would be ready to obey all orders, though 'directed to use their bayonets against their 'countrymen.' Mr. Pulteney was ever decidedly, for these reasons, also against the erection of barracks; and Mr. Pelham looked upon them as the greatest terror to a free nation. These were sentiments delivered by men in power at that time, and were such sentiments as he could wish to see manifested in the conduct of the minister of the present day. He quoted a passage from Gage. In 1739, he had also declared, 'That nothing 'could be more fatal than to have a large body 'of the military confined to barracks, and kept 'in force: such a measure was the finishing, 'he declared, to the liberties of a free nation.' The men should be ever quartered on publicans; for barracks were fortresses calculated to involve the kingdom in destruction, whence soldiers were always ready to rush at the instigation of any despot or enemy to their country. If such a scheme was apprehended or meditated, it was the duty of every Englishman to draw his sword, and not to sheath it until the authors were punished. There may be newfangled doctrines opposed to these arguments; but what he had stated were strictly accordant to the wholesome rules of the constitution. He was aware that one apology would be made, that it was a great hardship to the inns to have the troops billetted on them, because that they receive no more at present than they have done several years ago. This was a matter easily obviated; for let the dragoons pay the same as others, and in this there would be a saving to the nation, as it would render the erection of barracks unnecessary. It would be also said, that troops were better disciplined when in barracks, than when billetted on the public; as to their dis-

cipline it was a matter of little concern, if they were not disciplined against the constitution. Barracks have ever been erected in free countries to overawe the people, and are generally fortresses from whence military sally forth to stifle the murmurs of the public. He declared, that he believed in his conscience, the only object for erecting barracks was, to create a disunion between the military and the people. The present minister had been called a glorious, an immaculate and a constitutional minister. He sincerely wished that the friends of the constitution should be tried like the friends of religion; not by their words, but by their deeds. It has been said by a gentleman, whom he hoped to see support him this night (Mr. Burke) that the 'Influence of the Crown had 'increased, was increasing and ought to be 'diminished.' If any thing had since that period been pared off the influence of the Crown, Mr. Pitt, he said, had taken care to fill up the chasm, by the patronage of India, and other matters that rendered that influence more formidable than ever it has been at any former period. He was concerned to see so many deserting from the standard of liberty to rally round the throne. He was not averse to the piety of administration, but he was concerned to see men dead to the feelings of liberty, crowd to church to hear contending priests debating of divine rights and passive obedience. Mr. Taylor concluded by moving, that the House should express its abhorrence of the system of erecting barracks, a system reprobated by the ablest political writers, whose recorded opinion was, that it was totally inconsistent with the spirit of our free and excellent constitution, that the soldiers should be divided from the great mass of the people by being quartered in barracks."*

My lords, I have taken the liberty of stating it fully that I may not be charged with quoting partially; and your lordships will see, in what strong language this gentleman speaks of the unconstitutional measure of raising barracks; that the intention of it is, to separate the standing army from the people, and consequently to add new chains, or stretch the power of the executive government. This barrack system was not defeated by Mr. Michael Angelo Taylor's speech, or by those other able speeches that supported his side of the question. The associators at Dundee had seen barracks afterwards erected at Perth, which was not very distant, and the common report being, that other erections of the same kind were to be made in the vicinity of Dundee, they had surely as much reason to have their fears and alarms as any member of the House of Commons; and they appeal to the passage which has been read, that their fears are more moderately and chastely expressed.

Now, my lords, will your lordships be pleased to go to the second interrogatory, which I apprehend will likewise be said to contain the most libellous matter? "Is not the executive branch daily seizing new, unprecedented, and unwarrantable powers?" Now, my lords, what is the meaning of this? Why I will immediately refer to parliamentary language; but, in the first place, I would call your lordships' recollection, to what has been these hundred years past the uniform language both in parliament and out of it. I will go no farther back than Mr. Dunning's celebrated motion in the House of Commons (which is in the recollection of all of us) that the "influence of the Crown has increased, is increasing, and ought to be diminished."* Did not thus a regular vote of the House of Commons say as much as this hand-bill says? And was it not proclaimed in all the newspapers?

But in addition to this let us remember Mr. Burke's famous Reform bill for taking down this "influence," and his speeches on that occasion; Mr. Burke was surely a fitter object for an indictment than Mr. Palmer. I shall just beg leave to read a very small part of this speech.

"You would," said he, "have the court deserted by all the nobility of the kingdom."

"Sir (addressing himself to the Speaker), the most serious mischiefs would follow. Kings are naturally lovers of low company;"

Lord *Eskgrove*.—Then low company should like kings.

Mr. *Haggart*. (Continues reading) "they are so elevated, above the rest of mankind, that they must look upon all their subjects as on a level: they are rather apt to hate than to love their nobility, on account of the occasional resistance to their will, which will be made by their virtue, their petulance, or their pride. It must indeed be admitted that many of the nobility are as perfectly willing to act the part of flatterers, tale bearers, parasites, pimps, and buffoons, as any of the lowest and vilest of mankind can possibly be. But they are not properly qualified for this object of their ambition. The want of a regular education, and early habits, with some lurking remains of their dignity, will never permit them to become a match for an Italian eunuch, a mountebank, a fiddler, a player, or any regular practitioner of that tribe. The Roman emperors, almost from the beginning, threw themselves into such hands; and the mischief increased every day, till the decline, and final ruin of the empire. It is, therefore, of very great importance (provided the thing is not

* See in the New Parliamentary History, Mr. M. A. Taylor's speech in the House of Commons, February 22nd 1793.

* See the Debate in the House of Commons on the above Resolution moved by Mr. Dunning in the New Parliamentary History, Vol. 21, p. 340.

overdone) to contrive such an establishment as must, almost whether the prince will or not, bring into daily and hourly offices about his person a great number of his first nobility; and it is rather an useful prejudice that gives them a pride in such a servitude. Though they are not much the better for a court, a court will be much the better for them. I have, therefore, not attempted to reform any of the offices of honour about the king's person."*

What is this but saying, kings in general are animals fond of low company? But was this language of Mr. Burke thought seditious? No, it was meant to enforce a great plan of reform. The plan was approved, and was carried; and no prosecution was thought of against Mr. Burke.

My lords, I will now read to your lordships the speech of Mr. Wharton, in the House of Commons,† upon the constitution, and the words that he makes use of in this motion upon the present state of the constitution. I shall not read the whole of it, but he asserted (and said, he risked nothing by the assertion, for no man would be hardy enough to deny it,) and he pledged himself to prove it in a committee of the House, "That all that was valuable to the people of this country, all the provisions which were stipulated to secure the peace and prosperity, the individual liberty and the general property of the people of this land, had all been, since the revolution taken away—All."

Here, my lords, is the language of a member of parliament; and there is a respectable division in the House, of eleven to seventeen. I do not mean to justify that language, but when such language is used in the British senate, and circulated in newspapers and pamphlets through every corner of the kingdom, is the panel to be prosecuted, or is a society to be blamed for speculative opinions on matters of government? There is no overt act of sedition alleged; no act of resistance.

But, my lords, laying that aside, is not the extension of the excise laws a topic of conversation? And does any body pretend to justify it? The only justification that can be made of it is, that a great deal of money is raised by it, and that, I am sure, is the only thing that would allow parliament to continue it; but it must be admitted that it is a grievance, and has all along been considered as an oppression. And now, my lords, allow me at the same time to mention that which every body sees in every newspaper, and hears in every public and private company, and what people in their own houses feel; and let me call your attention to the language in which the grave judge Blackstone condemns the extension of these laws; he reprobates them as oppressive in the highest sense, (reads.)

"But at the same time, the rigour and arbitrary proceedings of excise laws, seem hardly compatible with the temper of a free nation. For the frauds that might be committed in this branch of the revenue, unless a strict watch is kept, make it necessary, wherever it is established, to give the officers a power of entering and searching the houses of such as deal in exciseable commodities, at any hour of the day, and, in many cases, of the night likewise. And the proceedings in case of transgressions are so summary and sudden, that a man may be convicted in two days time in the penalty of many thousand pounds, by two commissioners or justices of the peace; to the total exclusion of the trial by jury, and disregard of the common law. For which reason, though lord Clarendon tells us, that to his knowledge the Earl of Bedford (who was made lord treasurer by King Charles the First, to oblige his parliament,) intended to have set up the excise in England, yet it never made a part in that unfortunate prince's revenue; being first introduced on the model of the Dutch prototype, by the parliament itself after its rupture with the Crown. Yet such was the opinion of its general unpopularity, that when, in 1642, 'aspersions were cast by malignant persons 'upon the House of Commons, that they 'intended to introduce excises, the House for 'its vindication therein did declare, that these 'rumours were false and scandalous; and 'that their authors should be apprehended, 'and brought to condign punishment.' However, its original establishment was in 1643, and its progress was gradual; being at first laid upon those persons and commodities, where it was supposed the hardship would be least perceivable, viz. the makers and venders of beer, ale, cyder,—"*—When we are roused to complain to parliament on that head, no wonder strong language is used, when now, without exaggeration, it may be said almost every thing we eat or drink, comes through the hands of an excise officer.

My lords, with these variety of examples, with the language of parliament, the authority of Blackstone,—and if it were not detaining your lordships, I might quote more authorities, for it is the daily practice,—but—I say, with Mr. Dunning's motion, the opinion of Blackstone, and the speeches in the House of Commons, I put it home to your lordships, whether the language of this hand bill is not comparatively moderate? I say, it is language chaste in the extreme, which it is entitled to a Briton to use, and of which, I trust, your lordships will not deprive him.

Now, my lords, I will refer your lordships to the third interrogatory; if I am taking up too much of your lordships time, it is not

* See New Parl. Hist. Vol. 21, p. 53, 54.

† See in the New Parliamentary History, Mr. Wharton's speech on May 31st 1793.

* 1 Bl. Com. 318.

my blame, the libel being laid so indefinitely, that I am obliged to go through the whole of it.

Lord *Abercrombie.*—Take your own time.

Mr. *Haggart.*—I am much obliged to your lordship.

Lord *Abercrombie.*—No, you are not obliged to me, it is your privilege, and your right.

Mr. *Haggart.*—My lords, the third interrogatory is, "Has not the House of Commons (your own security from the evils of tyranny and aristocracy) joined the coalition against you?"

And now, let me call your lordships attention to a petition from the Friends of the People in London to the House of Commons, on the 17th of May last. I shall not read the whole of it, although the whole of it is much stronger than any thing that is here; but I shall read this paragraph.

"Your petitioners inform your honourable House, and they are ready to prove it at your bar, that they have the most reasonable grounds to suspect that no less than one hundred and fifty of your honourable members owe their elections entirely to the interference of peers; and your petitioners are prepared to show, by legal evidence, that forty peers, in defiance of your resolutions, have possessed themselves of so many burgage tenures, and obtained such an absolute and uncontrolled command in very small boroughs in the kingdom, as to be enabled, by their own positive authority, to return eighty-one of your honourable members." *

My lords, whether they can prove the fact or not, here is the language, and that language is not looked upon as libellous or seditious. And, my lords, when it comes into the great vehicle of the press, that freedom of speech, that sacred covering which the members of the House of Commons have, is taken off, and you must take this either as a matter libellous, or not libellous in itself. My lords, in addition to this, I may call to your lordships recollection what has been again and again averred, namely, that the nabob of Arcot himself, returns fourteen members to the House of Commons. The only dispute, if I recollect right, is whether he returns fourteen or seven. Is the language then of this hand-bill to be found fault with? Can it be said, that eighty members introduced by peers, is not an high aristocratical influence? Can it be denied that members of the nabob of Arcot are those of a tyrant? I pray God, that petitions and all legal means may be used, that such language as this may be used again and again till this pestilence in the constitution is rooted out. And I do submit to your lordships, that these instances are infinitely stronger than is necessary to authorize the language here used, and will justify the use which is here made of it.

* See in the New Parl. Hist. the petition presented by the honourable Charles [afterwards second earl] Grey on May 17th 1793.

Now, my lords, the next query which follows (and I hope I shall soon exhaust the libellous matter in this paragraph), is, "Is the election of its members either fair, free, or frequent?" My lords, if I have made out my other positions, which I submit to your lordships I have made out, by the speeches in the House of Commons, the authority of Blackstone, and others which I shall presently read, I have shown, that the election of its members is neither fair, free, nor frequent; if peers interfere, when constitutionally they have no title to interfere, and if the nabob of Arcot has so many votes in the House of Commons, (and when a respectable petition from London asserts that they will prove it, you must take the fact for granted), it is a monster in the constitution, and I say, nervous language may and must be used to get rid of that monster.

Now, your lordships will allow me (and I believe I shall have done upon this subject), to refer you to the Morning Chronicle, that I read above, and likewise to the Edinburgh Gazetteer which is in your lordships hand. I shall not trouble your lordships with repeating them; it is a repetition of the same propositions as in the second and third interrogatory.

The next interrogatory is,—"Is not its independence gone, while it is made up of pensioners and placemen? "If I understand any language, it is just a repetition of what was said before; that it is the fact is indisputable, and it is as indisputable that, being the fact, it can be no libel whatever upon the constitution. Without troubling your lordships with reading any more quotations from newspapers which I have in my hand, I submit to your lordships, that talking in the freest manner of the depraved state of the House of Commons is the language of parliament itself, and shall I be told, when that is the fact, that I am not entitled to make use of such language? Is then such liberty of speech lawful in newspapers and unlawful in hand-bills? No; nothing either libellous or seditious can be attached to it. Those whose chief return from their members of parliament are their speeches, are well entitled to see them.

Now, my lords, to go to where I left off,—I shall not trouble your lordships with going over the whole of it: "We have done our duty, and are determined to keep our posts, ever ready to assert our just rights and privileges as men, the chief of which we account the right of universal suffrage, in the choice of those who serve in the Commons House of Parliament, and a frequent renewal of such power."

Now, my lords, this your lordships see, is complaining, that the right of universal suffrage ought to be in the people. As I have already said, I will not take upon me to say, what ought to be the state of representation; but this I will take upon me to say, that they

have a right to hold opinions, and that they have a right to speak it out; and, as I have mentioned already, they are as much entitled to have an opinion upon that subject, and to petition parliament, or to express their fears to their members, just as much as I have. Allow me to state to your lordships, that upon this point there have been associations and resolutions at former periods, and the language here I take to be copied from those resolutions. Here is a letter from his grace the Duke of Richmond to colonel Sharman of the Irish volunteers, in which he says, "The subject of a parliamentary reform, is that which, of all others, in my opinion, most deserves the attention of the public, as I conceive it would include every other advantage which a nation can wish; and I have no hesitation in saying, that from every consideration which I have been able to give to this great question, that for many years has occupied my mind, and from every day's experience to the present hour, I am more and more convinced, that the restoring the right of voting universally to every man, not incapacitated by nature for want of reason, or by law for the commission of crimes, together with annual elections, is the only reform that can be effectual and permanent. I am further convinced, that it is the only reform that is practicable." There is a publication that never was conceived to be a libel, and the language there is more direct and pointed than any thing in the publication now before your lordships. He goes on to say farther, that "It is from the people at large that I expect any good. And I am convinced, that the only way to make them feel that they are really concerned in the business, is to contend for their full, clear, and indisputable rights of universal representation." There was neither libel nor sedition supposed when this came from the duke of Richmond.

Now my lords, to go from that to the detail of the meeting itself, which is directly the form of this Berean Meeting-house Society, only it happens to be at the Thatched House tavern in London. (Reads) "At a numerous and respectable meeting of members of parliament, friendly to a constitutional reformation, and of members of several committees of counties and cities: Present

The duke of Richmond,
Lord Surrey.
Lord Mahon.
The Lord Mayor,
Sir Watkin Lewes,
Mr. Duncombe,
Sir C. Wray,
The hon. William Pitt,
The rev. Mr. Wyvill,
Major Cartwright,
Mr. John Horne Tooke,
Alderman Wilkes,
Doctor Jebb, &c. &c.

"Resolved unanimously, That the motion of the hon. William Pitt, on the 7th instant. for the appointment of a committee to inquire into the state of the representation of the people of Great Britain, and to report the same to the House; and also what steps it might be necessary to take, having been defeated by a motion for the order of the day, it is become indispensably necessary that application should be made to parliament, by petitions from the collective body of the people, in their respective districts, requesting a substantial reformation of the Commons House of Parliament.

"Resolved unanimously, That this meeting, considering that a general application by the collective body of the people to the House of Commons cannot be made before the close of the present session, is of opinion, that the sense of the people should be taken at such times as may be convenient during this summer, in order to lay their several petitions before parliament early in the next session, when their proposals for a parliamentary reformation (without which neither the liberty of the nation can be preserved, nor the permanence of a wise and virtuous administration can be secure) may receive that ample and mature discussion which so momentous a question demands."*

My lords, there is the resolution, and in consequence of that, your lordships know to what extent associations took place. The county which took the lead in this great effort for political reformation was that of York. Not less than 600 noblemen and gentlemen assembled at York and their example was followed by 29 counties. The petitions of these associations procured redress by stopping the American war; while Burke's bill produced the reform. In some counties they proposed to bind their members by oath, to vote for reform. Every man was at this time called to associate; and addresses from associations were never supposed libellous. No, my lords, people of all descriptions were called forward by these high sounding names, every man was declared to have a right to be free, and to judge for himself. Since that time, petitions and addresses have been still more frequent. In 1784, a petition from the Association of Dundee would not have been rejected.

Now, my lords, I take it, that the only other paragraph with which I need trouble your lordships is this, "You are plunged into a war by a wicked ministry and a compliant parliament, who seem careless and unconcerned for your interest, the end and design of which is almost too horrid to relate,—the destruction of a whole people, merely because they will be free."

Now my lords, here is a very strong and a very pointed opinion expressed with regard to the war; but I am sure I can show more

* See the Resolutions inserted in a note to lord Erskine's Defence of Frost, *antè*, Vol. 22, p. 492

pointed averments, and stronger language than that which is used in this passage; and I take it, that no person will now say but that, at least, there are great numbers of that opinion, even the necessity of the war itself occasioned a great dispute and violent debates in the House of Commons, and after the declaration of the minister, which your lordships will allow me to read a single passage from, it is possible that these Bereans might be alarmed, and that the words of the minister himself might lead them to fear that it might be continued, till what were called French opinions were totally eradicated.

Now it certainly will be admitted, that the French revolution at its commencement, was looked upon as a great era of liberty, and there was no person whatever, but rejoiced at it. It was the language of every person: every body rejoiced at it. That corruptions have crept in, that enormities have taken place, every person must regret; the French have gone far indeed, but many respectable people think the war is carried far likewise. And to go to Mr. Pitt himself, when he debated upon the war, he enlarged on the causes of it, viz.—the principles of France. And although he at first only threw out that till these were totally subdued, we would contend with them to the latest hour of our lives; he afterwards said, he would not pledge himself but he might interfere with their internal government. This certainly supposed we were to interfere with the internal and fundamental government of France. Now, my lords, if the executive government of this country is to go the length of overturning that constitution which was founded upon the basis of freedom, I say, if any other constitution is set up by the allies, it is overturning a constitution that was universally acknowledged to be a good one; and I say that these conventioners, these persons meeting at the Berean Meeting-house in Dundee, have a right to hold and express the same opinions which the minority in the House of Commons held and expressed, that if the war was carried farther than driving the French from Holland where they had no title to be, it was carried too far: their frontier towns might also be taken as hostages, but why again make inroads into France? Does not this infer that the minister wishes to interfere in the French government, and, in conjunction with his allies, to legislate to France? It is impossible to justify such an interference. I say, my lords, impressed with these ideas, they have made use of such language which, as I have shown your lordships, was copied from their superiors. It might also be said, we indirectly were concerned in taking away the liberty of the Poles. Russia and Prussia were the immediate instruments, we were their allies. I hope there is no Briton who approves of the proceedings of these despots, and I trust we are not about to follow their example in our interference in France. Such interference goes to the overthrow of all government. The lust of the empress of Russia might have been glutted by the dismemberment of Turkey and Poland,—but her ambition is insatiable and unbounded;—her late manifestos show that it is her will and pleasure that liberty be eradicated from the face of the earth.

Now, my lords, I cannot conceive of any other passage that can be deemed libellous, except one, and that is this, "A list of bankruptcies, unequalled in any former times, forms a part in the retinue of this Quixottic expedition." With regard to the facts previously stated, there is ground for saying, that a great variety of bankruptcies have occurred, and that by the war your trade is sore cramped, and almost ruined, and that thousands and ten thousands of your fellow citizens, from being in a state of prosperity, are reduced to a state of poverty, misery and wretchedness. I believe, my lords, that is not at all exaggerated, whether from war or not I cannot say, but it is certain that is the fact; and as to the term Quixottic, the gentleman who composed the address, perhaps wished to show his great learning in having read Don Quixotte, but at any rate the term is extremely innocent, by the word I understand nothing more than romantic; and I say they were entitled to say so; and I believe most people are now satisfied, that that which was once thought a most pious thing, and the forerunner of an ascension into Heaven, a crusade to the Holy Land, is nothing but Quixottic.

My lords, the same language is used by Mr. Fox in his letter to his constituents, and that I should think would be sufficient authority for the use of this expression, if no other were to be found upon record. If it were necessary, I might follow the duke of Richmond to Ireland, and refer your lordships to a speech of Mr. Grattan, who was called the Irish Demosthenes, in which he uses great strength of language; and I shall beg leave to read a single passage from it:—"The arguments which the right hon. gentleman had advanced on that occasion, went only to prove the necessity of taking measures against the specific assembly, which was apprehended, not to show that the law of the land was against all conventions whatsoever. The question was then, whether a declaratory law should be enacted, or one pointed only against a particular object. The papers, or letters missive, which the right hon. gentleman had produced, showed it was become necessary to guard against the specific measure that was intended; but he would not, under that pretext, agree to a perpetual law; as well might they repeal the Habeas Corpus law, because of a temporary rebellion.

"But it was said, that the law of the land is already what the bill declares it. He had already considered that question. He had put the question to the learned gentlemen, whether mere deputation to consider of matters

of public concern constituted an unlawful assembly? To this they had made no answer. The next question was, whether this statement arose from the act? He here read the preamble, and showed it declared, that deputation for any of three purposes was unlawful: first, deputation for preparing petitions; second, for redress of grievances; and, third, for considering any matters of public concernment. If then mere deputations for considering matters of public concern were not unlawful by law, the preamble of the bill declared for law what was not so.

House having resolved itself into committee, Mr. Burgh in the chair, Mr. Grattan went on: he said—

"The gentlemen on the other side had not proved, that mere deputation, such as the bill described, was illegal, but had confined themselves to assemblies, purporting to be general representatives of the people. These, they had said, were illegal, not because there was any statute or any adjudication against them, but by the principles of law: for as one representative assembly, the Parliament, already existed, the people had no right to choose another. But surely, if the purposes for which this second assembly was chosen were different from those of the first, the bodies were no longer of the same kind, and therefore the argument did not hold. He granted, indeed, that the people had no right to appoint an assembly to exercise the functions of parliament, but they might appoint one for minor purposes — as to petition parliament, and the like. The argument was a quibble: if carried to its full extent, it would illegalize all those smaller representative assemblies which are appointed by particular descriptions of men for commercial and for religious purposes; it did not therefore support the bill.

"Gentlemen had taken pains to confine the idea of illegality to deputation from great bodies of the people for national purposes.—The bill was much more comprehensive, for it expressly declared illegal all deputations, committees, &c. purporting to represent any 'number' or 'description' of the people whatsoever, 'in county, city, town, or borough,' for the purpose of petitioning parliament, or considering matters of public concern.

"Gentlemen had also said, that no such delegated body had ever been tolerated in Great Britain. The answer to that was, there was such an assembly at this moment existing in Scotland, for the purpose of effecting a parliamentary reform. They had existed, and been tolerated in England also."—[He then read several extracts from the Annual Register of 1781, containing an account of the proceedings of a meeting of deputies from 'eighteen' English counties, appointed to present a petition to parliament on the subject of the expenditure of public money, which petition was presented, and received by the British parliament.]—"This meeting, of which the duke of Rutland, the marquis of Buckingham, sir G. Savile, lord Spencer, Edmund Burke, and many others of the most distinguished characters in England, were members, was a complete refutation of the hon. and right hon. gentlemen's assertions, that deputed assemblies for the purpose of petitioning and discussing matters of public concern were illegal and unknown in England. He wished, therefore, that the words 'Be it 'declared,' should be omitted, that the bill might not be declaratory; and if gentlemen would agree in that, then he should move such amendments in the enacting part, as would confine the operation of the bill to the specific assembly which was dreaded, and also limit the duration of the bill to a year."

I am aware that it may be objected, that these appeals to the language of parliament are not in point, as a greater liberty of debate has been allowed in parliament than out of it. The answer is obvious. So long, undoubtedly, as the speeches of members are not committed to writing or publication, they are not accountable for what they say; and if they are published without their knowledge, they are as little accountable; but the moment they appear in newspapers, they are without the privilege of parliament, and the publishers are accountable; instance the late case of the archbishop of York, who took upon him to say, that the hon. managers in Mr. Hastings's trial acted like a parcel of Marats and Robespierres—not very decent language for a bishop. But in the House of Commons, when it was argued, they had no doubt that his grace could not be called to account for what he had said in his place;* and the only remedy was against the publishers of the newspapers, in which the speech appeared. On consulting precedents, however, they dropped even the prosecution of him, as immemorial practice had sanctioned the newspaper detail of speeches.

But it is not on newspaper authority alone that my client has to rest; Grotius, Puffendorff, De Lolme, Hume, and all writers of any note, who have canvassed constitutional questions, are all agreed, that free and unlimited communication of sentiment is essential to, and the great characteristic of, free-

* The expressions alluded to were uttered by the archbishop of York [Markham], in Westminster-hall, on Saturday, May 25th, 1793, the hundred and fourteenth day of Mr. Hastings's trial, and were occasioned by the manner in which Mr. Burke conducted himself on the cross-examination of Mr. Auriol. On the 12th of June, Mr. Whitbread, in the House of Commons, complained of the archbishop's speech, as reported in the paper called "The World," and moved that it was a scandalous libel on the conduct of the managers. Mr. Dundas thereupon moved an adjournment, which, on a division, was carried by a majority of 60 to 8.—See the New Parl. Hist. vol. 30.

dom. Let me call your lordships attention to a foreign writer, but whose book has gone through as many editions as the sermons of a respectable clergyman. I mean to oppose to Dr. Blair the 'Constitution of England,' by Mr. De Lolme; and I believe it has even outshot Dr. Blair; Dr. Blair having gone through but 12 editions, and De Lolme, I believe, having gone through 24 editions, which serves to show what respect the inhabitants of this country bear to that writer. Upon the subject of libels, he says, "That though to speak ill of individuals was deserving of reprehension, yet the public acts of government ought to lie open to public examination, and that it was a service done to the state to canvass them freely."—[See serjeant Glynn's speech for Woodfall, in the prosecution against the latter, by the attorney general, for publishing Junius's 'Letter to the King.'—Vol. 20, of this Collection, p. 899.]

There the king was attacked as an individual; and he observes—"And indeed this extreme security," speaking of the liberty of the press, "with which every man in England is enabled to communicate his sentiments to the public, and the general concern which matters relative to the government are always sure to create, has wonderfully multiplied all kinds of public papers. Besides those which, being published at the end of every year, month, or week, present to the reader a recapitulation of every thing interesting that may have been done or said during their respective periods, there are several others, which, making their appearance every day, or every other day, communicate to the public, the several measures taken by the government, as well as the different causes of any importance, whether civil or criminal, that occur in the courts of justice, and sketches from the speeches either of the advocates, or the judges, concerned in the management and decision of them. During the time the parliament continues sitting, the votes, or resolutions of the House of Commons, are daily published by authority; and the most interesting speeches in both Houses are taken down in short-hand, and communicated to the public in print.

"Lastly, the private anecdotes in the metropolis, and the country, concur also towards filling the collection; and as the several public papers circulate, or are transcribed into others, in the different country towns, and even find their way into the villages, where every man, down to the labourer, peruses them with a sort of eagerness, every individual thus becomes acquainted with the state of the nation, from one end to the other; and by these means the general intercourse is such, that the three kingdoms seem as if they were one single town.

"And it is this public notoriety of all things, that constitutes the supplemental power, or check, which, we have above said, is so useful to remedy the unavoidable insufficiency of the laws, and keep within their respective bounds all those persons who enjoy any share of public authority."*

By this it is not intended to throw any disrespect, by this respectable writer, upon the magistrates, but it is saying, in other words, as I will immediately read from another authority, that it will force bad men to be good, or show them in what way they will be punished, if they continue to be bad.

Mr. *Clerk*.—My lords, I will read your lordships, page 451, of Mr. De Lolme's book.

"In all monarchies (and it is the same in republics), the executive power in the state is supposed to possess, originally and by itself, all manner of lawful authority; every one of its exertions is deemed to be legal; and they do not cease to be so, till they are stopped by some express and positive regulation. The sovereign, and also the civil magistrate, till so stopped by some positive law, may come upon the subject when they choose; they may question any of his actions; they may construe them into unlawful acts; and inflict a penalty, as they please: in these respects they may be thought to abuse, but not to exceed, their power. The authority of the government, in short, is supposed to be unlimited so far as there are no visible boundaries set up against it, within which boundaries, lies whatever degree of liberty the subject may possess.

"In England, the very reverse obtains. It is not the authority of the government, it is the liberty of the subject, which is supposed to be unbounded. All the individual's actions are supposed to be lawful, till that law is pointed out which makes them to be otherwise. The *onus probandi* is here transferred from the subject to the prince. The subject is not at any time to show the grounds of his conduct. When the sovereign or magistrate think proper to exert themselves, it is their business to find out and produce the law in their own favour, and the prohibition against the subject." And, in a note, he says, "I shall take the liberty to mention another fact respecting myself, as it may serve to elucidate the above observations, or at least my manner of expressing them. I remember when I was beginning to pay attention to the operations of the English government, I was under a prepossession of quite a contrary nature to that of a gentleman whose opinions have been discussed: I used to take it for granted that every article of liberty the subject enjoys in this country, was grounded upon some positive law by which this liberty was insured to him. In regard to the freedom of the press, I had no doubt but it was so, and that there existed some particular law, or

* De Lolme on the Constitution of England, book ii. ch. 12, pp. 298—300; ed. of 1816.

rather series of laws or legislative paragraphs, by which this freedom was defined and carefully secured: and as the liberty of writing happened at that time to be carried very far, and to excite a great deal of attention (the noise about the Middlesex election had not yet subsided), I particularly wished to see those laws I supposed, not doubting but there must be something remarkable in the wording of them. I looked into those law books I had opportunities to come at, such as Jacob's and Cunningham's Law Dictionaries, Wood's Institutes, and Judge Blackstone's Commentaries. I also found means to have a sight of Comyns's Digest of the Laws of England, and I was again disappointed: this author, though the work consists of five folio volumes, had not had, any more than the authors just mentioned, any room to spare for the interesting law I was in search of. At length it occurred to me, that this liberty of the press was grounded upon its not being prohibited,—that this want of prohibition was the sole, and at the same time solid, foundation of it. This led me, when I afterwards thought of writing something upon the government of this country, to give the definition of the freedom of the press, which is contained in p. 295, 296: adding to it the important consideration that all actions respecting publications are to be decided by a jury."*

Mr. *Haggart*.—In addition to what Mr. Clerk has read, I shall only state a circumstance, which, in the statute law of this country, your lordships will find an authority for, that during the reign of Charles 1st, during the reign of Charles 2d, or part of it, and for a period of years about that time, there was known a court called the Star Chamber, a part of whose duty was the licensing of all that was published; publications were in the same situation then, that they are in Spain at this moment, but your lordships know, that was one great mean by which the glorious Revolution was brought about; and since that time, an unbounded freedom has succeeded upon the broad basis, upon which your lordships now see it.

I will now read to your lordships part of the speech of Mr. Grattan of Ireland; he says, speaking of the associations:—"But there is not a man in Ireland, there is not a grand jury," &c.

[Here the learned counsel read some quotations from Mr. Grattan's celebrated speech in the House of Commons on the subject of the Dungannon meeting, in which Mr. Grattan justified not only meetings and associations within doors, but what he called a *great original measure*, meetings in the fields. Mr. Haggart did not mean by quoting to approve of what Mr. Grattan said; but, said he, is there any such proposal started in the Berean Meeting-house? No. The language there is constitutional and proper. Yet no prosecution was thought of against the publishers of this speech, but the comparatively innocent publication of the Berean Association is arraigned!

My lords, the next authority I shall state upon the same subject with De Lolme, is that of the immortal Milton.—"We have them not," says Milton, "that can be heard of, from ancient state, or polity, or church, nor by any statute left us by our ancestors, elder or later, nor from the modern custom of any reformed city, or church abroad; but from the most antichristian council, and the most tyrannous inquisition that ever existed. Till then, books were ever as freely admitted into the world as any other birth; the issue of the brain was no more stifled than the issue of the womb."*

I shall next call your lordships' attention to the celebrated Mr. Hume's opinion upon this business, and, my lords, it being a thing perfectly well known, that Hume was a monarchical man, and attached to monarchical principles, the authority of this author is as great an authority as I can possibly refer to. After showing the advantages of a monarchy, he says,—"It is apprehended, that arbitrary power would steal in upon us, were we not careful to prevent its progress, and were there not an easy method of conveying the alarm from one end of the kingdom to the other. The spirit of the people must frequently be roused, in order to curb the ambition of the court; and the dread of rousing this spirit, must be employed to prevent that ambition. Nothing is so effectual to this purpose as the liberty of the press, by which all the learning, wit, and genius of the nation, may be employed on the side of freedom, and every one be animated to its defence. As long, therefore, as the republican part of our government can maintain itself against the monarchical, it will naturally be careful to keep the press open, as of importance to its own preservation."†

Now, my lords, I shall beg leave only to mention farther, lord Chesterfield's opinion upon this subject, which is extremely short, but very emphatic, and very expressive, in a speech delivered by him, in his place as a member of parliament. "The stage, my lords, and the press, are two of our outcentries; if we remove them, if we hoodwink them, if we throw them in fetters, the enemy may surprise us."‡

* De Lolme on the Constitution of England, book 2, second part of chapter 17, p. 447, edit. of 1816.

* See Milton's Areopagitica, as cited in lord Erskine's defence of Paine, *antè*, Vol. 22, p. 439.

† See Hume's Essay on the Liberty of the Press, as cited in lord Erskine's defence of Paine, *antè*, Vol. 22, pp. 441, 442.

‡ See lord Chesterfield's speech on the Play-house bill as cited in lord Erskine's defence of Paine, *antè* Vol. 22, p. 443. Respect-

My Lords, there is just one authority more, and, although it is not an authority of that standing, yet it has reason within it, and will speak for itself; and if any addition be wanting to the name of Stanhope, the reasoning will have its weight. "If," says his lordship, "our boasted liberty of the press, were to consist only in the liberty to write in praise of the constitution, this is a liberty enjoyed under many arbitrary governments. I suppose it would not be deemed quite an unpardonable offence, even by the empress of Russia, if any man were to take it into his head to write a panegyric upon the Russian form of government. Such a liberty as that, might therefore properly be termed the Russian Liberty of the Press. But, the English Liberty of the Press is of a very different description: for, by the law of England, it is not prohibited to publish speculative works upon the constitution whether they contain praise or censure."*

I say, there is language expressive of itself; it is beyond all authority, it is drawing that contrast, which I hope will long continue between the government of Russia and the government of this country.

Having encroached so much upon your lordships' time, but conceiving it to be my duty—

Lord *Abercromby*—Take your own time.

Mr. *Haggart*—I say, I think I was called upon to show, that, if criminality is to be attached to the liberty of the press, infinitely greater freedom than that used by my client, has been made use of. I shall not take up your lordships time with a recapitulation of the speeches or of the authorities. But, my lords, to bring my argument to a point: I hope I have, in the first place, clearly shown, that the minor proposition does not in this case make out the facts which are stated in the major proposition, and besides the indictment is otherwise defective and informal. I say that there is not through the whole of this, any attack upon the constitution of the country; and if your lordships are of opinion, that there is no attack whatever upon the constitution of this country in the whole of that paper, you will dismiss it as not properly laid. But if your lordships should be of opinion that these objections should be overruled, I have to state to your lordships farther, that upon the whole face of the paper there is no sedition; that the sum and substance, that the whole scope and meaning of the paper is, to encourage the presenting another petition for parliamentary reform, to stir up their friends and fellow-citizens to apply again to parliament; and after the examples and authorities I have given, I trust no one will call in question the right of British subjects as often as they choose to exercise that privilege. I say that is the whole sum and substance upon the face of that paper, and that being the case, I do submit and humbly hope, your lordships will have no difficulty in finding that the matter which is here charged, is not relevant.

My lords, I will only farther add, that if alarms some time ago went abroad, those alarms are unquestionably now at an end. If any period is more to be dreaded than another, it must be a crisis of this kind: history informs us how difficult it is to stop short when the cure is performed. The natural progress is from one extreme to another, and without much circumspection a disease more fatal than that meant to be removed is the infallible attendant. In the hands of your lordships I know there is no risk. As you yourselves received it, so I trust the precedent of this day will transmit to your posterity the effusions of the press, as the immortal Milton has expressed it, "as free as the issue of the womb."

Mr. *Maconochie*.—My lords, in collecting from this very long speech, what is the import of the objections that are opposed upon the part of the panel, I find myself not a little at a loss; as far as I can comprehend, the whole drift of Mr. Haggart's speech goes to attack the major proposition in the indictment, as not containing sound law. For as to the minor proposition not amounting to the contents of the major, I can scarcely suppose that any man in this house or elsewhere, in the use of reason and common sense, could examine the conduct and language contained in the minor, and hesitate an instant to see that the facts come up to the major proposition. If it be true that the conduct of this man, or that man, the language of this man, or that man, may be quoted as evidence of the law of Scotland to your lordships, that such language may be used with impunity, and that therefore this is the law; if your lordships adopt that, then it overturns the major proposition. But that it contains law, I am sure no lawyer can doubt; no man can doubt, not only that it is the law of Scotland, but it is impossible any government should exist if it is not law. The words of it are, "that by the laws of this, and every other well-governed realm." &c. [See the Indictment.]

Now, I should humbly apprehend, that if, as I assert, this is the clear law of this land, and the clear law of every country, what your lordships have to inquire is, not how often this law has been infringed with impunity, not how often the greatest men in the kingdom or the most insignificant have dared to violate it; but what your lordships have to inquire into is, whether or not under the circum-

ing this speech of lord Chesterfield, see lord Kenyon's observation in p. 442, of the same Volume.

* See this passage cited by lord Erskine in his defence of Paine, *ante*, Vol. 22, p. 444. From the coincidence of the preceding quotations, I infer that the learned counsel must have had in view the eloquent argument of lord Erskine, to which I have alluded.

stances stated, the production libelled upon, amounts—if proved to have been written or circulated by the person at the bar—to the statement of the law in the major proposition?

Now, my lords, I apprehend that the circulating privately this publication (it was a sort of smuggled business) which cannot be perused without seeing that it contains in it all the ingredients charged as criminal in the major proposition, is sedition in as far as it directly tends to rouse to acts of sedition and violence. I apprehend that very slight observation will be sufficient to satisfy every person that I am stating no more than the import of that paper amounts to. I do not mean to follow the learned gentleman through his various evolutions with regard to it, but simply to call the attention of your lordships to the plain and obvious import of it, as it meets the eye of a man of common understanding. It commends, first, their fellow-citizens for their loyal and steady conduct in these *days of adversity*, that they have shown that they are worthy of at least some small portion of liberty; but then it promises to rouse them from their lethargy, and it tells them, in order to rouse them from their lethargy, that the small portion of liberty they once enjoyed is fast setting, and that they would be in the depth of slavery and misery, if they prevent it not by their well-timed efforts. Having said this, it goes on to tell them, what are the misfortunes that are sinking them in this depth of slavery and misery (and very great misfortunes they are, if they are true), and assures them that every day is adding a new link to their chain. This is the general statement, I apprehend, of the evil, that every day is adding a new link to our chain, which, by the way, is a plain assertion that they are at present slaves, and in chains, to which new links are adding; and it goes on to state what are the chains. "Is not the executive branch daily seizing new, unprecedented, and unwarrantable powers?" Then it goes on to attack the other branches of the legislature as well as the king. "Has not the House of Commons (your only security from the evils of tyranny and aristocracy) joined the coalition against you?" I am now speaking as to the plain scope and intendment of the words; what does any man of common sense understand by it? Is it not plainly saying, that the House of Commons, who should be your protection against the executive and aristocratic part of the government, have joined that coalition that is formed against the people by the other two bodies of the legislature? The indictment is not for treason, but I apprehend there are words there that would amount to treason; but if they do not, surely they will amount to sedition in what is stated in the major proposition.

The Address then proceeds to say, "we have done our duty, and are determined to keep our posts." I wonder, among the learned gentleman's other authorities, he did not quote the French newspapers, where every day they are saying how they stick by their posts. I expected that that would have been one of his authorities.

It then goes on, "ever ready to assert our just rights," &c. [See the Indictment.]

Then hear what they state, and in what words they assert the universal right of suffrage. Is there any such right to be found in the law of Britain? Is there any such right to be found in the constitution of our ancestors? or in any constitution of the world, except that of France? and I am happy to think, that I know something of the history of our constitution, because I am sure there was no period when there was any thing like universal suffrage; there never was a period when it was so much like universal as at present. In what way are they to assert it? it cannot be done by legal means, for no law recognizes it, although they were to assert it as their just right and privilege, and as the chief of their just rights and privileges.

Then, my lords, they go on to say, that they are not disappointed by the decision of the House of Commons concerning their petition. "It is a question we did not expect, though founded on truth and reason, would be supported by superior numbers." The learned gentleman therefore is clearly mistaken in saying, that the object of this paper was to produce a second petition, for they say, they were not disappointed in their defeat. In short, it is now the time when these gentlemen are to assemble, in consequence of their not having been disappointed in the petition which they presented *pro formâ*; and now they were to assert their rights by another mode, not by petitioning, because that was a measure that they knew to be nugatory, for they say, they were not disappointed.

Then they go on, "Far from being discouraged," &c. [See the Indictment.]

Now, upon what principle of law, or, upon what principle of common sense it is founded, I know not, but so it is, that those gentlemen set up this in the same way that they might set up a claim to share the property of every gentleman in the country, or to seize upon any franchise belonging to another. That is not the species of liberty granted by this constitution; the constitution of this country, when it confides a franchise, confides it to a part, for the benefit of the whole; it does not confide it to the mob, it does not confide it to a disorganized mob; but it confides it where it has the least reason to expect it to be abused: and we thank God, it has been so little abused, as to produce a House of Commons, to answer every purpose of government; to produce, upon the whole, such a House of Commons, as no body of men in any country can be put in competition with. Where is there a collection of men by delegation, that can be compared to the virtue, the integrity, and the character of the British

House of Commons; having preserved for two centuries a character that no senate ever maintained, for high spirit, for an equal regard to the interest of the country at large, for a regard to the interest of the meanest, as well as the highest;—a regard that keeps them, and has kept them above 150 years, within the precincts of their own rights and privileges, without encroaching upon those other powers equally necessary for the existence of a government;—a situation that will place them in the annals of mankind, as high as any body of assembled men ever stood, or can stand;—a situation in which they are now unrivalled, when compared. Indeed, it is unnecessary for any man who can read, to think of stating the comparison between them and the body of men collected according to those Utopian systems of universal suffrage, which were a disgrace to mankind, and brought confusion upon a nation which was before enlightened and civilized.

Then it goes on, having stated this claim, and that they are to assert it, and having warned their fellow citizens that petitioning was good for nothing, for nothing was to be expected from it, they say, "The time is now come," &c. [See the Indictment.]

Is this the language of a petitioning people, who are calmly stating their sentiments, in order that they may meet with a free discussion? Is it not rather a trumpet to collect for a *great original measure*, which Mr. Haggart has mentioned? It is the import of Mr. Grattan's language, and I defy any man of common sense to read the paper without seeing, that this original measure of the people assuming their own powers was here alluded to.

[Here Mr. Haggart reminded Mr. Maconochie that he did not speak in approbation of the measure.]

"The time is now come," &c. [See the Indictment.]

Undoubtedly, if the time is come, according to this language, to assemble round the fabric of liberty in order to preserve it, the country should rise as a man to protect it, for the fabric of British liberty is well worth protecting; but it is not to be protected by such hands.

"You are plunged into a war by a wicked ministry," &c. [See the Indictment.]

These gentlemen, having now arraigned the constitution, having told you in their address to their fellow citizens, that the whole parts of the legislature were corrupt and joined in a coalition against the people, having stated their claim to a right of suffrage, hostile and ruinous to the constitution, which would be fatal to it the moment it was accomplished, that could not exist, either without a king, or a house of lords. Having arraigned these, and stated their plan of claiming an universal suffrage, and warning the people to rouse themselves, —then, as the horrible effect of our present wicked constitution, the king with the parliament are joined in a coalition, the end and design of which is, the destruction of a whole people, merely because they will be free!—a most horrible design, indeed, it would be! For who can doubt that if the legislature of this country concur in the design of destroying a whole people, merely because they will be free, that that legislature should be consigned, not only to detestation, but to destruction and punishment? It should be put an end to—I say, the nation should rise and extirpate such a legislature, as would concur in the design of extirpating a whole people, because they will be free; instead of such an object, they ought to rejoice in the dissemination of freedom; but will any person say with truth, that that is the conduct of this country? So long as France kept to their original revolution, this nation, and all good men looked on with satisfaction rejoicing at what took place; but when they forsook their own proper ground, at the moment that our liberties were threatened, and our constitution was attacked, when foreign enemies by the most insidious and artful means, aided our intestine foes to misrepresent the constitution, and excite the people to spurn the gifts that God in his mercy had showered upon them, more than he had ever bestowed upon any other people, then it became not only lawful but absolutely necessary, for us to join in the war against men who, having destroyed every particle of liberty in their own country, endeavoured by the worst of means, by rebellion, and by every sort of treachery and villany, to disseminate the same cursed principles in other countries. Then it goes on to mention the natural consequences of this war, consequences, which I say must be attributed, in a great measure, to such societies as the Addressers; for if there had not been those infamous connexions with France, those connexions that have appeared in public, from societies calling themselves Friends of the People in this country, there would have been no war; without the encouragement afforded by such principles, and such societies, the French never would have been so mad as to have thought of attacking the British nation; but when malcontents, and societies of malcontents were rearing their heads here, the rascally part of France, insidiously attempted to throw this country into confusion, that they might enjoy the fruits, at the expense of all that was good or worthy in the country.—Then they go on to tell a gross falsehood, but highly fitting to kindle an alarm in the minds of well-meaning ignorant people. "To the loss of the invaluable rights and privileges which our fathers enjoyed," &c. [See the Indictment.]

Taxes are oppressive and hard, but they are often the price of great and important privileges, of great enjoyments, and at any rate they are the least of two evils; better pay taxes than be under the government of a mob, or of the base and unprincipled charac-

ters that are designed to be the leaders of it. War is a great evil, but a necessary war, though a great evil, must be borne. But these gentlemen state a list of bankrupts, which they are pleased to attribute to the war, which I have no objection to, but they state these evils as brought on by wickedness, because government did not sit with their arms folded across unmindful of their duty. Where are those invaluable rights and privileges which our fathers enjoyed? What rights did our ancestors enjoy which we do not enjoy in the fullest manner, and with improvement? I know of none; and I defy all those who arraign the constitution and the government of this country, and all the passages that have been summoned and scraped together from every quarter for the purpose, to show me one privilege that they enjoyed which we do not now enjoy. This is a gross, a palpable, and a most seditious falsehood, for there is nothing that tends more to kindle discontent in the minds of the lower classes of people, than the idea of being deprived of what their ancestors purchased, and endeavoured to transmit to them. Can there then be a grosser crime committed, than, in a serious matter of this kind, to endeavour to stir up the ignorant, by telling them a gross and abominable falsehood of that nature? Having gone this length, they conclude with a solemn appeal, and it is such an appeal that, upon momentous occasions, might certainly with great public virtue be given, but it is such an appeal, that, as long as government exists, can never be endured, and can never be understood in any other light than that of an *original measure*, as the gentleman has termed it. The words are these, "Fellow citizens, the friends of liberty call upon you," &c. [See the Indictment.]

Such language as this, would have immortalized those who used it, had it been published at the era of the revolution, when the bishops * were sent to the Tower, when the king assumed the right of levying taxes without the consent of parliament, and of modelling our religion; these were the days which sanctioned such language; and if such times should come again, let it be used, but not till they come again. Shall the rights and privileges of the freemen of this country be sported with? Shall we be deprived of the benefits of that free and happy government under which we live by such vile incendiaries? Or, shall we, to our face, have the ignorant part of the country solicited to rise, to deprive us of our privileges which we have enjoyed for a century past? And, shall we not have a power in the law of this country, to punish the intentional rebel, who would endeavour to stir up the people to make use of a power which the law never gave them, which their ancestors never gave them, and for which they never could be fitted? Such an act must seem to every person, whatever are their sentiments, as long as government exists, as most atrocious and iniquitous; as a thing that calls for punishment, and, for which, no plea of justification can possibly be set up in a court of justice: the only plea that can be set up is, the plea of the sword—none else. The time may come when such spirit may be properly shown, and then I hope there will be spirit and virtue in the country to assert its rights.—The country lately showed its power to assert its right, not against the executive power, not against the representatives of the people, but against those who were organizing a different representation, those little self-elected parliaments, those self-constituted societies, from which a convention was to have been formed; then there was reason for alarm to the good citizens of the country, and the good citizens came forward, and signified their resolution to abide by the constitution with their lives and fortunes, and to share its fate. And, I hope, if our religion, or our civil liberty is again attacked, if a king or a mob shall dare to persecute us for our freedom, that there will be spirit in this country to assert its right, and maintain our constitution.—Such things may be—I can scarcely venture to figure them; yet kings are but men, and we ought to be thankful for such a king as we have; but if a king were to come who was to send the bishops to the Tower, because they refused to read a prayer or a liturgy disowning the Godhead of Christ; were the time to come, when men should be punished for refusing to pay taxes, imposed by a king without the consent of parliament,—were the time to come, when men were to be tried without form of law, without judges or juries, but by the arbitrary power of the Crown, by their minions and delegates, then would be the time for every man of spirit in the country to assert their rights. But till then, while your lordships sit in judgment, you are bound to consider such language as is here used, as a gross and most violently criminal act, an act approaching to high treason, if not actually high treason. But I am not called upon to go so far. I am only called upon to point out to your lordships, that there was in this libel, matter that came up to the full statement of the major proposition; and it is impossible to consider it in any other view, than as an attempt to insinuate to the people, that they have been oppressed, injured, and deprived of their rights, contrary to what is known to be the fact; and that they are living under a wicked and abominable government, when they are living under the best government that ever existed; and endeavouring by falsehoods to excite them to tumult and finally to appeal to the sword.

Mr. *Haggart*.—My lords, whether it has been my fault in not making what I meant to say sufficiently perspicuous, or the fault of

* See their case Vol. 12, p. 183 of this Collection.

the prosecutor in not being attentive to what I said, I know not, but he has totally mistaken the first great and capital objection which I stated to this indictment. He says, I told your lordships, that the major proposition, stating what is sedition, is not sound law. My lords, I never stated such an idea, and I am equally astonished that such an idea should have occurred to any lawyer, and particularly should have occurred to the learned gentleman. What I meant to state was, that the indictment as it stands does not form a syllogism; that what is stated there is sedition no person can doubt, but what I stated was, that the practice having made it necessary that the strict syllogistic form should be adhered to, unless the minor proposition states facts that would make out that attack upon the constitution which is stated in the major, the syllogism is incomplete, and that therefore you cannot attend to it.

Again, I did not say that high titles, &c. justified the language they have used; I only averred that uninterrupted practice beyond all memory and that practice unchallenged is consuetudinary law, which is the best law and best precedent we have. If it should please our happy constitution of King, Lords, and Commons, if it should please them to make a declaratory law to say, henceforth there shall be no such associations, then I would hold it to be illegal, because it would be prohibited by the only legal authority, that is, an act of parliament, but without such law the practice cannot be illegal. The learned gentleman dwelt a long time upon the word *chains*. Since the learned gentleman seems not satisfied with the explanation I have given him, he may have another. It may allude to self-elected magistrates, who, while lending deaf ears to every sort of reform, are decking themselves with gold *chains*; at least I think I have more merit in my explanation than the learned gentleman has in his dissertation on French posts. In a word, I understand these chains to refer to the abuses of parliament. My lords, I must take the liberty of stating, that Mr. Maconochie did lay himself not a little open in what he concluded with; he said, if I have taken down his words right,—and he will correct me if I have not—he said, as there was no law that lays down, that universal suffrage is to be recognized in this country, that no person is entitled to form a speculative opinion upon it, or to express that opinion in a petition to the House of Commons.

Mr. *Maconochie*.—I did not say a word of speculative opinions.

Mr. *Haggart*.—But you said, that no subject of this country had a right to go into the mode of assembling and petitioning the House of Commons.

Mr. *Maconochie*.—I said no such words.

Mr. *Haggart*.—Then what you said was this (I hope I shall be right the third time), that this was a language fitted to a great era, such as the Revolution; and that if there were to exist wicked ministers, if it was then to be the case, that the reverend bench of bishops were to be sent to the Tower for refusing to read the confession of faith, that Mr. Maconochie proposed then the kingdom would be entitled to rise. I shall beg leave to know what people are to rise! is it only the bishops who are to arise? or would commoners also? Mr. Maconochie inculcated, that in such time the people might lawfully go into open rebellion. This is sedition with a witness—I abhor that idea.—I disclaim that idea. I say the constitution does not admit of it. I say that it is more a libel upon the constitution than any thing I ever heard written or said. I say Mr. Maconochie's plan is sedition in the highest degree, when opposed to me; he is for rising with open arms, and all that I contend for is, that I may have the freedom of petitioning parliament; that is the whole scope and tenor of the petition and resolutions in this case; and I hope I shall not be told that I have no right to petition. If a time shall come when petitioning shall be held illegal, or be prohibited, I shall then think that the liberty of the subject and every thing belonging to this happy constitution, is transferred from the people to the crown of the monarch.

Lord *Eskgrove*.—Thomas Fyshe Palmer stands accused of the crime stated in this indictment; he is indicted upon principles of law and justice; and though he stands there, he is to be presumed at present an innocent person. I should be extremely happy in this, as in every other case, that the issue should prove that he is innocent. But at present, where the consideration is the nature of the charge against him, in order to establish the relevancy or irrelevancy of this libel, it is my rule and the rule of this court, to take the charge as if it were true. Afterwards it will be to be inquired into, whether he committed the crime or the crimes with which he is charged, or no, in case the relevancy of this indictment shall be established My lord, the libel consists of two propositions, in the usual form of criminal indictments in this country; it consists of the major proposition, which sets forth the nature of the general charge, and proceeds, in the minor, to state the facts from which the prosecutor infers that the panel has committed that crime. My lord, with regard to the major proposition, the counsel for the panel has admitted, that it is sedition; and no person can entertain a doubt, that, if there is any such thing as a government or a constitution existing in this country, the major proposition does set forth a crime of a very high nature against such government. It states that, 'whereas by the laws of this, and every well-governed realm, the wickedly and feloniously writing or printing, or causing to be wrote and printed,' &c.—[See the major proposition of the Indictment.]

I said before, that the counsel for the panel disclaims disputing the relevancy of this general charge. Indeed, my lord, it would be the strangest country in the world, and the strangest government that ever existed, which could be compared to nothing but that anarchy which unfortunately prevails in France, if a person who does that which will raise a spirit of discontent in the minds of the people is not punishable for so doing. For this address, in order to rouse the people, has calumniated the measures of government, as tyrannical; and vindicated the enemies of this country, representing that we are at war with them, because they will be free, and recommending them as objects of great commiseration, and that it is a fault in parliament, to make war against a people who are brethren, and whom we should support. Such a publication is seditious; by the old law of this country it was more, for sedition, and raising commotions among the people, was considered as a species of treason; and, my lord, though I am thankful that we are not called upon in these days, to carry matters to that extent; yet it is said by the counsel, that it approaches very near to treason: that it is very difficult to draw the line between trying to inflame the people against the king who is one of the branches of the legislature (which is called treason), and endeavouring to overthrow not only the King, but the King, Lords, and Commons, which cannot be a lesser crime. The minor proposition here sets forth, that this person, the person here described, a clergyman by profession, presiding at Dundee, over a set of religious people (to which I have no objection—a man in this country can enjoy his religion with perfect freedom, and never be called in question)—that this gentleman, one of the society of the Friends of the People (I have no objection to the title of any society, if their actions are good)—did then, and there, put into the hands of George Mealmaker, weaver in Dundee, a manuscript or writing of a wicked and seditious import, &c. composed by the said T. F. Palmer, or by him caused to be composed; there is no distinction between a man's writing with his own hands, or his dictating to another to compose. It afterwards underwent various alterations, suggested by the foresaid meeting, and by desire of the said meeting, was again put into his hand, that it might by his means be printed and published.

Then follows the title of it, which begins with "Dundee Berean Meeting-house, July 1793.—At a general meeting of the Friends of Liberty, they unanimously resolved to publish the following Address to their Fellow citizens." It does not rest there alone, with having written and published this paper, but goes on farther, and says, "Further the said Thomas Fische Palmer, did sometime during the month of July aforesaid, wickedly and feloniously distribute, and circulate, in Dundee, Edinburgh, and elsewhere, or caused to be circulated," &c.—And these are the particular acts condescended upon.—This gentleman at the bar, is alleged to have circulated this composition, if it is an innocent and a harmless paper, all these things will go for nothing, that man was not to blame for composing it, or for writing, or causing it to be written, or for circulating, or causing it to be circulated; if not, such writing, printing, or circulation is criminal. If it is a paper tending to cause tumults and rebellions, and overturn the government, we are to consider every circumstance attending it. One thing I cannot depart from, which, if it is a seditious writing, is not a little of a strong nature. This gentleman's counsel tells us, that he is a gentleman, born of a respectable family in the South of England. A stranger comes to this country, with an intention to teach and propagate his religious principles among these people; I have no objection to that, if he had confined himself to preaching the doctrines he chooses to adopt; but when here he ought to conform to the laws of this country, but instead of doing that, he turns his meeting-house into a house of sedition,* for it states it, as dated from the Dundee Berean Meeting-house. All nations are liable to have bad men among them; but I own, we are little obliged to strangers, who, coming here under the pretence of preaching what they call the gospel, should preach sedition among the people.

My lord, this leads me to the nature of this paper; and before I go minutely into it I do, for one, hold, that the liberty of this country is doubtless closely connected with the right to petition all the branches of the legislature; and when they present that petition in proper form, and in decent language (which I am sorry to say we have not an instance of this day quoted to us from the bar), then I hope the legislature will take proper means for redress. But, if on the other hand, instead of applying in the regular manner to the only quarter where redress can be obtained, any public or private man, clergy, or laity, shall think proper to call meetings and collect together mechanics, and those whose education and circumstances do not entitle or qualify them to judge of matters of legislation—people ignorant altogether of the very grievances which they are told they are loaded with, till they are assembled and taught that they were in a state of oppression, the case is exceedingly different. Now let us look into this paper. "You, who, by your loyal and steady conduct in these days of adversity," &c. [See the Indictment.]

* His lordship supposed, that as the address was dated from the Berean Meeting-house, that this Berean meeting-house was Mr. Palmer's place of worship; this was not the case, and was afterwards explained to his lordship. *Orig. Edit.*

"Days of adversity"—It does not occur to me that this country was in a greater state of adversity (further than being engaged in a war) in the month of July last, than at any other period:—"they are only worthy of some small portion of liberty;" I hope all men here know and experience more liberty than any subject of any other country upon the face of the earth. We know very well that, in the month of November, there were many such meetings held, and many such publications; and we knew a stop was put to them, by the noble spirit that appeared for supporting the constitution; and I did not think that, in July last, there would have been any person so bold, as to make an attempt which had proved so fruitless before. This paper goes on to say—"we will tell you whole truths, they are of a kind to alarm and arouse you out of your lethargy." Here this writer is supposing that his auditors are in a state of lethargy, which implies a state of contentment, they are in a pacific contented state. But this writer is to awaken them from their lethargy. "That portion of liberty you once enjoyed is fast setting, we fear, in the darkness of despotism and tyranny." Where are these words exemplified? That the sun of liberty is setting in the darkness of despotism and tyranny, we observe in the case of the subjects of a country, who have just cause to endeavour to reform their constitution, and who took measures at first that might possibly have had that effect. It shows that, when reformation gets into improper hands, they are the greatest tyrants and the greatest enemies to liberty; such a state of anarchy, of murder, and of arbitrary power, never was seen since the world began. "Too soon perhaps you who were the world's envy, as possessed of some small portion of liberty,"—a small portion of liberty! No, my lord, we possess all of us liberty more than we ever possessed, and all that is consistent with a free and happy state—"will be sunk in the depth of slavery and misery,"—what words are there that can tend more to impress the minds of men, and especially men not so well acquainted with the history of this country, to take up their swords, in order to save them from that despotism and slavery? "Is not every new day adding a link to your chains?" Where are the chains of arbitrary power? Is there a man existing in this country who does not enjoy his liberty, his religion, the freedom of exercising his art, his ingenuity, his industry, his trade? Is there any man who does not exercise those privileges to the utmost extent that human wisdom can devise? "Is not the executive branch daily seizing new, &c. powers? Has not the House of Commons joined the coalition against you?" Against you!—What does this represent to these innocent good people, who were called to be the disciples of the person who wrote this paper? I hope it was not that gentleman, but I am obliged to consider it as if it was. What do you think of it? Would it not strike every man that it meant, that the king, or his ministers are daily seizing unprecedented and unwarrantable powers, or in other words are daily exercising acts of despotism? Has Mr. Haggart at the bar offered to prove that this is a truth? Is it not consistent with the knowledge of every man who hears me, and is able to read and look at the history of this country of late, that nothing has been done by either king or ministry without the sanction of the legislature? Then that is to represent the king, in the first place, as a tyrant. Then who are the next set of people? "Tyranny and aristocracy." No country was ever more happy under a more amiable prince, and the father of his people. Who are the aristocracy? The House of Lords. Then comes the House of Commons, they are the barrier, and no doubt they are the true and proper barrier to prevent encroachments by king and lords; but they are not to be trusted, they are joined in a combination with the king and the lords against your liberty. "Is the election of its members either fair, free, or frequent?" That is to indicate, that the people of this country are to have no confidence whatever in that branch of the legislature; and thus instructed they can have no confidence in their rulers. Were this a time or place to look back on our history, how opposite the conduct of our rulers has been, might be easily demonstrated; I shall only mention the general warrants. —Have we not evidence in this, as in many other instances, that the constitution contains in itself principles of amendment? and it will be daily amended. The Addressers say, "We have done our duty and are determined to keep our posts." I will not say any thing about the word posts, if it means only to discover any thing that might be wrong, I do not object to it. "Ever ready to assert our just rights and privileges as men, the chief of which we account the right of universal suffrage." I have no objection to a petition to parliament, desiring them, if they think fit to alter the constitution, which I have no objection to, if they choose to allow it; their wisdom will be better than mine; but is it not to overthrow the constitution? Is it not making a new constitution? For, to the present time, no such thing as universal suffrage ever existed: it is a speculative matter, and, I think, if we look to a neighbouring country, where guillotines, massacres, and murders are going on, it is no great encouragement to experiments of this kind, and I was surprised to hear my friend Mr. Haggart at the bar in place of a universal suffrage of the people, limit the right of voting to 100*l.* Scots a year: I rather suspect there is not one in all the Berean congregation who could boast of so much property; this society, therefore, need not distress themselves about a suffrage, which even Mr. Haggart does not seem disposed to allow them. Then it goes on, "we are not deterred, &c." [See the Indictment.]

I cannot but agree with Mr. M'Conochie, that it is impossible for any man to read this paragraph, and avow what Mr. Haggart has pleaded, viz. that the whole intention of this was to encourage the people to petition, when the very words of it are, we neither expected, nor do expect to succeed in a petition to parliament; and therefore something else must be intended. What else? every man, who hears me, must see; it could not be to carry on the measure that they knew parliament was resolved not to adopt. An *original measure* seems to have been in view, to rise, to carry through what parliament have refused to grant. Then follows the next paragraph, "the time is now come, &c." [See the Indictment.]

My lord, this appears to me, in the first place, a gross falsehood, in saying the fabric of liberty is in danger: it is safe, and I hope will be safe in this country to the latest posterity, but those people are to rise to overthrow that constitution, which is the happiest in the world. "You are plunged into war," &c. [See the Indictment.]

This is to awaken the minds of the readers to the object of the present war in which we are engaged (which is owing to the ambition and madness of the unfortunate people we are engaged with), and evidently tends to lead them to think that we mean to fraternise a people with the sword, agreeable to French practice; and the way of fraternizing them is with swords and guns, as they attempted to do in Brabant, and other countries; but they soon found themselves in a state of misery and slavery: and did they not show an inclination to come into this country to fraternize us too? Did they not talk of sending forty thousand men to force us to accept of liberty? And was not that a cause of alarm to the friends of true liberty, and occasioned them to rise in a way that, I should have thought, would have put an end to those attempts? Had these fraternizing principles been only heard in France, we might have cared the less, but here, in this country, societies were formed who were ambitious of this connexion. The war in which we are engaged is in self-defence against the greatest invasion of our rights and liberties, that ever was attempted; but that we are at war, for the purpose of destroying a whole people, is an insinuation so gross and so cruel, that it is impossible any government ever can maintain itself, if it suffers such falsehoods to escape. "By it your commerce is sore cramped, and almost ruined. Thousands and ten thousands of your fellow-citizens from being in a state of prosperity, are reduced to a state of poverty, misery, and wretchedness." This is not the people they are speaking to, for they are in a state of lethargy: are they to awaken them to tell them there is no commerce, that all is gone to wreck? Poor honest tradesmen! They think nothing of that till they are told by this preacher of the gospel, and warned to rise. The conclusion is, "The blood of your brethren is pouring out; and all this to forge chains for a free people, and eventually to rivet them for ever on yourselves?" So that the object of this war is to enslave this nation. "To the loss of the invaluable rights and privileges which our fathers enjoyed, we impute this barbarous and calamitous war, our ruinous and still growing taxation, and all the miseries and oppressions which we labour under." Now taxation is only one complaint; but there is, besides taxation, all the growing miseries we labour under: taxation is necessary, without it a nation cannot exist; it is an unavoidable misfortune, we cannot help it; but these worthy people are told, besides the taxes, all the miseries you are labouring under. When did we enjoy privileges that we are not now in the possession of? And which I hope will be transmitted to the latest posterity. The Friends of Liberty call upon you "by all that is dear and worthy of possessing as men, by your own oppressions, by the miseries and sorrows of your suffering brethren," that is, by the miseries and sorrows of the people in France,—"by all that you dread; by the sweet remembrance of your patriotic ancestors; and by all that your posterity have a right to expect from you,—to join us in our exertions for the preservation of our perishing liberty, and the recovery of our long lost rights." What a strange representation is this for a people! One would suppose this man was preaching to a set of people in Russia, or Otaheite, as ignorant of Britain as one of those people. Does he say in what manner these rights are to be asserted? Not a word. Does he say the meaning is that you concur in a petition to parliament? There is no such thing; but you are to "gather round the fabric of liberty." I wonder he did not mention the tree of liberty. But if any government suffers such an attack upon the constitution, making the man miserable who was happy before (nothing can have a worse effect to make men unhappy, and to bring anarchy and confusion into the country, among a set of originally well-disposed persons), it will not long be a government. Is there any person living so abandoned as to be desirous, that this happy country should be put into that miserable and wretched situation to which they are so much attached? They talk of liberty! What madness to talk of liberty on French principles! Why a man was executed the other day for saying, that one tyrant was no worse than seven hundred, and directly his head was cut off. As to the liberty of the press, I believe it never was in the situation it is in now in France. I am a true friend to the liberty of the press, when printing in the ordinary course of publication; why let a man exercise that proper liberty, which I hope every man is entitled to; let him speculate on principles of government, and print his speculations: but when that press is made the

trumpet of rebellion, to circulate libels and seditious publications in the form of a handbill, there never was an advocate for the liberty of the press who pretended to justify it.

We have heard a great deal about speeches in Parliament, I do not know whether they ever were made or not in the Houses of parliament, in which they were said to be delivered; they are not understood to be in the hearing of any body; but we do not know upon what authority they have taken upon them to assert, that such and such men make use of such expressions; but supposing they were true, it is the business of parliament to take cognizance of its own members; it does not belong to me to inquire into it; if they have said any thing wrong, I am very sorry for it; but, if there are a thousand instances of crimes that go unpunished, is that an argument to be used by a lawyer; because persons are guilty of equal crimes, and have not been punished, that therefore a supreme court is to stamp an authority upon crimes brought before them? Let us suppose for a moment that a murderer were brought to this bar, what should we think if a counsel should plead that many murderers, aye murderers of title and respectability, had passed unpunished, let this man go too. That is the strangest argument I ever heard. Our duty, my lord, is merely official. I said before, we are not the judges of, whether this man is guilty or not, we are here considering whether he has committed a crime that ought to be punished. I can have no hesitation in saying, in my conscience, that there would have been an end of all government; every man would be unworthy of existing, who held, that a person finding fault with the constitution, and raising insurrections in the country, is guilty of no crime: and because others have done it that we are not to sustain the action, is an abomination; that if a court of justice were capable of it in this country, it would deserve and be worthy to receive the fate of that other country, in which all courts of justice, all liberty, and all religion have been overthrown. I am of opinion that it is perfectly relevant, that there is no occasion to separate it, and say, this passage is seditious, and that is seditious, but, that the whole of it is seditious: and I believe there is scarce any thing in it but is seditious; and I am happy that, in this country, Scotland, greater privileges have been enjoyed than in England. I am happy to say, that a late incident has shown that we have had more liberty than England has, for in questions of libel, and in questions of seditious publications, it never was in the breasts of the jury to say, whether it was a libel or not in England till lately; it is so now, which is another proof, that the parliament will amend themselves when they see cause for it; in so doing they only adopted in England what is and was the law of Scotland; and therefore, I shall give my humble opinion, that the libel is relevant, and I humbly move your lordship to find it criminal, and allow the panel to prove all facts and circumstances that may tend to exculpate him, or mitigate his guilt; and to refer it to an assize, to examine and consider upon the whole of the evidence, whether this is or not a most scandalous and seditious publication, and whether this man has committed the crime of writing, publishing, or circulating, yea or not.

Lord *Abercromby*.—My lord, before I give any opinion upon the relevancy of the libel, I must take the liberty to observe, that by far the greater part of the argument, maintained, upon the part of the panel, seemed to me to apply to a question, which, in my apprehension, has not the most distant connexion with the issue of this trial; I mean the whole part of the argument which respected the liberty of the press, and the danger which that liberty might incur from the event of this trial. I agree with the authors, quoted by the counsel for the panel, that the liberty of the press is one great bulwark of our free and excellent constitution, and, as such, I hope, my lord, we shall ever preserve it; but, in what does that liberty consist? It consists in this, that every man may write, may print, may publish what he pleases, free from the lash of a licenser, free from the controul of an imprimatur, as the counsel for the panel stated. My lord, with us the liberty of the press is as free as the liberty of speech itself; as every man in these kingdoms may utter by speech whatever he pleases, so he may write, may print, may publish what he pleases, without constraint, without being made amenable to the lash of the law. But, my lord, he does so under one condition; that, if he speak treason or sedition against his king or his country; if a man speak blasphemy against his God; if a man speak slander against his neighbour; then becomes he liable to prosecution for that treason, for that sedition, for that blasphemy, and for that slander. In like manner, with the utmost liberty to print what he pleases, if he print or publish blasphemy, treason, sedition, or slander, for such writings or publications he is punishable by law when convicted by the verdict of a jury of his country, to whose unfettered judgment it must go, whether he has been guilty of speaking, writing, printing, or publishing any thing criminal. My lord, that being the nature of the liberty of the press, it cannot be affected in any degree by this trial, in whatever way this trial may terminate; for the press has had full liberty to print, and the single question now to be tried is, Whether this writing be, or be not a seditious writing? that question the jury must ultimately decide. If there be no sedition in it, then the writer or publisher of it has been guilty of no crime; if there be sedition in it, then he has violated the laws of his country; and ought to suffer for so doing.

My lord, the single question which now occurs for our consideration is, Whether this

be a seditious writing or no? And, my lord, that is a question which, I agree with your lordship, seems to me not to admit of the smallest doubt; for I believe there is not within these walls one man of common understanding, whose mind is not warped by some strange bias, by some unaccountable prejudice, who does not concur in the opinion given by your lordship. As your lordship has given that opinion so fully, and as the learned counsel for the prosecution spoke of it so fully, I should think it improper in this stage of the cause, to detain the court with any farther observations. That the major proposition is sound law, and defines what is criminal no man can deny. It only remains for me therefore to find the libel relevant to infer the pains of law; but allow the panel to prove, in the usual form, any and all facts and circumstances that may tend to exculpate him and remit his guilt.

The following gentlemen of the jury were then sworn:

Charles Campbell,	James Lumsden,
Robert Stewart,	Alexander Duncan,
James Stewart,	Patrick Lindsay,
Thomas Sandiman,	Alex. Cunningham,
David Laird,	Alexander Wood,
David Anderson,	John Fair,
Col. John Thompson,	Andrew Whyte, clerk,
Jas. Calderwood Durham, Chan.	&c. &c.

EVIDENCE FOR THE CROWN.

The Court granted warrant to apprehend the person of William Moncrieff, town-officer in Dundee, who was lawfully cited to appear as a witness in this cause, and failed to appear. The court also fined the said William Moncrieff in the sum of 100 Marks Scots.

Harry Davidson, sworn.—Examined by Mr. *Burnett*.

Look at that declaration, and see whether it is the one that you heard the panel emit?—Yes.

Did he emit it voluntarily?—Yes.

He appeared to be sober, and in his senses at the time?—Yes.

There was no force nor compulsion made use of?—No.

Look at those subscriptions, and see if they are yours at the back?—Yes.

They were produced to you in the sheriff's clerks office, were not they?—Yes.

Is that your subscription?—Yes.

It is signed by you?—Yes.

Look at those two letters?—Yes, they have my subscriptions.

Mr. *Mack* also identified the hand-writing of the declaration and some letters, and produced a letter addressed to Mr. Skirving, found in Mr. Skirving's house.

George Meadmaker, sworn.—Examined by Mr. *Burnett*.

You are a weaver in Dundee?—Yes.

Mr. *Clerk*.—It will be proper to tell this witness, that there is nothing that he may say against himself, that can afterwards be brought against him in a criminal prosecution; and for very particular reasons, I wish the witness to withdraw a minute.

[The witness was ordered to withdraw.]

Mr. *Clerk*.—My lords, the fact most certainly is, that this witness was himself the author of the hand-bill which is now prosecuted; this is a fact of a very delicate nature for the witness to confess, and therefore when that question comes to be put to him, I submit to your lordships, it would be very proper to give him a very special warning, and a very special information indeed, that there is nothing that he can acknowledge, as to his being the writer or the publisher of this hand-bill, that can affect his own personal safety; or that it is possible that he can be brought to trial for the publication of this hand-bill.

[The witness called in again.]

Lord *Eskgrove*.—You are, upon the oath I put to you, to tell the truth; and I can assure you that nothing that you can acknowledge, or say, regarding your own conduct, can militate against you: you cannot be accused of it; however you must take care not to charge yourself falsely, for whatever is not true, you are liable to answer for.

Mr. *Burnett*.—You are a member of a society in Dundee?—Yes, there are two societies in Dundee.

What are they called?—One is called the Friends of the Constitution, and the other, the Friends of Liberty.

Which are you a member of?—The society of the Friends of Liberty.

Where do the Friends of Liberty meet?—They meet at present in a place, called the Berean Meeting-house.

Were you in the use of attending their meetings generally?—I generally attended them.

Are you acquainted with James Yeaman at the Scouring Burn?—Yes.

Is he a member of that society?—Yes.

Are there officers in this society, people that have any distinguishing name?—Yes.

Have you a preses?—Yes.

What other officers are there?—We have a secretary and a treasurer.

Did you bear any of these offices?—Yes.

What were you?—I was once treasurer, and once president.

Do you remember a manuscript at any time being produced in this society, upon any particular occasion?—I remember different manuscripts.

Do you remember a manuscript in the form of an address to friends and fellow citizens?—Yes.

At what time was that, as far as you remember?—Sometime in July month.

Do you remember the title of that manuscript?—I remember it was called an address to fellow citizens, or an address to the Friends of Liberty. I do not remember the words exactly.

Who was it that produced this address, do you know?—The first part that was produced was at a committee; it was made by the society in general, afterwards according to their liking.

But who produced the manuscript, the first part of it?—That which is but a part of it I produced.

The first part of it?—Yes, what was in being of it at that time.

Was that manuscript read at that meeting?—Yes.

Who read the manuscript as far as you recollect?—In the committee I believe it was laid upon the table, and Mr. Palmer, being invited by me, and some others, to that society, read it.

Did Mr. Palmer read it all through?—As far as I recollect he read it over.

What passed at the meeting?—No more passed at that meeting concerning it.

Was there an after meeting, when it was produced?—Yes.

Was there any other manuscript produced at that meeting?—No other that I know of.

Lord *Eskgrove*.—Was the meeting a committee, or a full meeting?—It was what was called in our notice, a general extraordinary meeting.

When was this general extraordinary meeting called, as far as you recollect?—I do not positively remember as to that.

Was it called by that committee that you were first in?—Yes.

What was the principle of calling that general extraordinary meeting?—Concerning the particular concerns of the society, in the first place; and then to publish an address to our fellow citizens, upon the critical situation of the country.

Was it proposed at that committee, that this manuscript should be read in the general extraordinary meeting?—Yes.

Who produced the manuscript afterwards at the general extraordinary meeting?—The society was sometime gathered before I went in, and who brought it into the house I cannot tell; there had been some consideration before I came into the meeting that night, and then I saw it lying upon the table first I think.

Was it read at that general extraordinary meeting?—Yes.

Who read it?—Me.

Was there any debate upon it?—Yes, there was.

Was the MS. of the Address complete at that time; was it finished?—No, it was not.

When was it finished?—It was debated, and various alterations proposed and agreed to, and those alterations ordered to be made out.

Was any thing done at the meeting after those alterations were made, any orders given about it?—It was ordered to be printed.

Now recollect yourself before you answer this question, Who was it that the meeting ordered to get it printed?—As far as I recollect it was delivered to Mr. Palmer and James Ellis, or one, or both of them.

Does it consist with your knowledge that Mr. Palmer was a member of that meeting?—He entered a member about that time.

Is there any form at the entry of a member? or any book kept of the society's proceedings?—There was a book with a test and the names of the society—subscribing to a small Declaration, and the reasons why they signed it.

And every member signed that when he entered?—Yes.

Would you know, if you were to see this address, whether it was the same address, that was approved of at that meeting and ordered to be printed?—I am not very sure.

Look at this?—I have seen a paper like this before. I could not swear that it is altogether the same, word for word, but the general of it is the same, I think; but I could not swear to the whole.

Look if your subscription is at the back of that?—Yes.

You mentioned sometime ago, that there was only part of the address made up and produced at the committee, and you mentioned afterwards, that this draught was produced afterwards at the general meeting, or part of it; now, as far as you recollect, was any addition made to this MS. from the time it was produced at the committee, to the time it was produced at the general extraordinary meeting?—There were some additions.

Do you know who made the additions?—I was not present, and I do not know.

Do you know in whose possession the MS. was, from the time of the committee to the general meeting?—As far as I know, it was in the possession of Mr. Palmer.

Was there, as far as you recollect, any thing mentioned in the books of the society, when this MS. was read; was any minute taken down?—No, there was not, that I remember; if there was, I did not see it.

Look at this paper—is that, as far as you recollect, the MS. copy produced at the general extraordinary meeting?—It is not.

Look at it again, and see if you know whose hand-writing it is?—I do not know.

Do you know any hand-writing that it is like?—That is a question that I cannot meddle with.

Lord *Eskgrove*.—You are obliged to say whose you believe it to be.—I do not know; and no man living can make me say more than I know.

You must tell us, what is your opinion.—I can form no opinion concerning that paper; I do not know who wrote it, nor whose hand-writing it is.

Mr. *Burnett*.—Do you know the person who wrote that paper, that was afterwards produced at this general extraordinary meeting?—The one produced at the general meeting was the same paper with some additions.

Lord *Eskgrove*.—Was it the same hand-writing?—It was the same paper with alterations.

Mr. *Burnett*.—Whose hand-writing were the alterations?—I do not know.

Mr. *Maconochie*. — Whose hand-writing were the additions?—I do not know.

Do you know the hand-writing of any thing that was put upon that paper?—I cannot say as to that, because I wrote some of the alterations myself.

Lord *Eskgrove*.—Did you write any thing upon that paper between the two meetings?—No.

Were there some alterations made between these two meetings?—Yes.

What opinion did you form? Did you believe it to be written by any one person in particular?—What I believe, I will not swear.

But you must tell us what you believe.—I thought it was Mr. Palmer who had done it, but was not sure. I thought he said he had wrote it; but am not sure whether he said so or not.

Mr. *Burnett*.—Are you acquainted with a person of the name of James Ellis?—I have some acquaintance of him.

Did you ever see any letters of James Ellis, or any writing of Ellis?—I do not remember at present any letters, or writings of his.

Do you know his hand-writing?—No, I do not.

You would not know it if you were to see it.—No.

Mr. *Maconochie*.—Were any of the alterations, that were made before the committee, or before the society, suggested by Mr. Palmer in your presence?—I have heard him in the course of conversation speak about it, and propose alterations.

The question that I put is, Whether any of the alterations, that were accually made, were suggested by Mr. Palmer?—There were so many of them speaking, that I cannot remember whether he did positively propose any of those things that were carried into effect, or not.

Was he one of the speakers?—Yes, he did speak upon it.

Lord *Eskgrove*.—You have said that the society ordered the Address to be printed; and I think you said, it was delivered either to Mr. Palmer, or some other person you named. I want to know whether that order was made by the meeting in general?—Yes, by the unanimous will of the society, without any dissention.

Mr. *Maconochie*.—You said it was committed to Mr. Palmer, or Ellis, to get it printed,—was any report made to the Society by this gentleman, of its having been printed?—The first report I heard was, that it was to be printed, and they accepted the offer, and that they should get it printed.

Lord *Eskgrove*.—Upon the oath you have taken, who was it made the offer to get it printed? — I said, these two gentlemen adopted the offer of the society, that they should get it done.

And when did you hear that it was printed?—The first that I heard of it was, when I first saw the printed copies in the meeting.—I beg pardon, I saw some in the hands of some of the members before I saw them in the meeting.

Mr. *Burnett*.—Who produced them to the society?—I cannot say.

Did you see any in the hands of Mr. Palmer in the society?—I do not remember whether I did or not.

Did you receive any of them from Mr. Palmer? Recollect yourself before you make the answer.—I remember of receiving one, but I am not sure whether I did not ask him for it.

Mr. *Maconochie*.—Were you treasurer to the society at this time?—No.

Do you know whether the society paid for the printing of these copies?—Yes.

Whom did they pay for them?—I heard that they were paid for, and saw the receipt for them. I saw an order given for the society to pay for them.

To whom?—To Mr. Palmer.

And you believe that order was obeyed, and actually paid to Mr. Palmer?—I believe so.

Mr. *Burnett*.—Did you hear from Mr. Palmer, or any other person, where this paper had been printed?—I never was informed properly where it was printed, so as to tell. I might hear a rumour, but I cannot tell.

Where did you hear it was printed?—I heard it was printed at Edinburgh.

Would you know the society book, if you were to see it again?—I am not sure.

Look, if that is the society book?—I cannot say positively what this book is, it is not unlike it, but I am not sure, because I see nothing to give me an assurance of it.

Do you know if there had been any leaves torn out of the society book?—There was, I heard, leaves torn out of the society book, but I did not see it.

Do you know what the leaves contained, that were torn out of the book?—I cannot say as to that, because I did not see them torn.

Were you told what they contained?—I was told they contained the names of the society.

And what were the names subjoined to? were they subjoined to a test?—Yes.

And that was torn out too, I suppose?—I cannot say.

Lord *Eskgrove*.—Did you hear, whether the test was torn out?—I cannot be positive whether I heard so, or not.

George Mealmaker—Cross-examined by Mr. *Clerk*.

Did you sign the test of the society?—Yes.

Do you remember the substance of the test?—I cannot positively say I remember it, so as to repeat it.

Recollect as well as you can, and state what it is in substance, not the very words, but the meaning of it?—We, whose names are hereunto subjoined, do declare, that we are not altogether satisfied with the present representation of the people, that we are for a shorter duration of parliaments, and a more equal representation, or something to that purpose, in the House of Commons.

Was there any line or measure chalked out?—They were to use every legal means in their power to obtain it.

Was it a short or a long paper?—It was pretty short.

What part of a page in this book did the test take up?—Not quite so much as the fourth part of a page.

How many lines did it make?—I do not remember the number of lines.

Does it consist with your knowledge, who wrote the Address when it was first produced?—Yes.

Who made the original draught? was it Mr. Palmer?—No.

I think you said Mr. Palmer had, in the course of conversation, and you believed, otherwise, as he was a speaker in the meeting, proposed alterations in the hand-bill?—Yes.

Can you tell what was the nature of those alterations?—As far as I could understand, they were of a softer nature than the thing was at first.

What do you mean by a softer nature?—The terms were not so harsh.

Mr. Palmer was for an address in softer terms—not so harsh?—Yes?

Did Mr. Palmer ever speak to you of the impropriety of publishing it at all?—In the original committee, Mr. Palmer was against publishing it altogether.

Has Mr. Palmer a house at Dundee, or near it?—He dwells in Dundee, I believe, sometimes; I have seen him in what I believed to be his own house.

Where does James Ellis live?—I have seen him, and have reason to believe that he lives with Mr. Palmer, but not altogether; I cannot say that he lives always with him.

Do you know at what time Mr. Palmer was admitted a member of this society?—I cannot recollect the day of the month, but I can recollect the time; it was on that night of the general meeting that I formerly alluded to.

Lord *Eskgrove*.—Did not you say that he was at the committee?—Yes, my lord; but I also told your lordship, that he was invited there that night.

Mr. *Clerk*.—You have spoken of alterations that took place upon the Address, between the meeting of the committee and the general meeting, what was the nature of the alterations?—I do not remember as to the alterations positively what was the nature of them, but I believe the words that Mr. Palmer had thought too harsh, were taken out of it, or marked and interlined.

Was there any alteration in the spelling?—Yes.

Was that the chief alteration?—Yes, it was.

Did you ever ask Mr. Palmer to write an address of that sort?—No, I never did.

Did you ever ask him to compose an address?—I do not remember whether I ever did or not positively; there was a talking of two addresses, or three, or more that were to be presented, but whether I asked Mr. Palmer to write one or not, I am not sure. I advised him to make such alterations as he thought necessary.

Do you remember it being proposed to Mr. Palmer himself, that he should write an address?—I cannot be sure at present of that.

Lord *Abercrombie*.—You have showed that the Address remained in the hands of Mr. Palmer, from the time of the committee, till the general meeting, and you said just now that you desired Mr. Palmer to make what alterations he thought proper; I should be glad to know at what time you desired him to do so.—At the committee it was given to him, and the committee ordered him to look it over, and see what alterations were necessary.

Mr. *Clerk*.—You have said that some of the alterations were made by yourself?—Yes.

Were those alterations made, after it came out of Mr. Palmer's hands?—Yes.

Lord *Eskgrove*.—Were your alterations adopted?—Yes, they were agreed to.

Mr. *Clerk*.—Am I to understand that those alterations, that were made in the paper after it came out of Mr. Palmer's hands, were adopted?—Yes, every clause was debated upon, and then agreed to.

You have already said, that Mr. Palmer was a speaker in the debate—Did he encourage those alterations that were proposed in the society, or did he disapprove of them, or what part did Mr. Palmer take in the debate at the general meeting? Was he for softening the terms, or making them more harsh?—I remember he was for softening the expressions that he thought were inconvenient; and I do not remember his proposing any alterations that night that were for making it, in my opinion, harsher, but still to be softer.

Did Mr. Palmer, at the night of the general meeting, continue to dissuade them from publishing the paper at all?—I do not recollect rightly whether he was against publishing it then; but he was at last for publishing it, in agreement with the rest of the society.

Do you know, or did you understand,

what was the object of the society in publishing this same paper? what good consequence did they expect from it?—I believe the meaning of the society was, if I rightly understood them, that, in the present situation of the country, and in the part that we had taken in the affair, we were determined to call upon our fellow-citizens, by a spirited address. We meant nothing in the world but to make way to their feelings, and not to their passions; we had no idea of sedition in it; and if there was, it was from want of knowledge in us: our ignorance is to blame; and what we expected from it was, in the course of our prosecution, to cause a reform, we thought it necessary to put forth a paper of that kind, to animate our fellow-citizens to go on in getting that redress which we had not yet got.

Was the propriety of publishing an address debated at more meetings than one?—We had considered the publishing of an address for two or three months.

And how many meetings might take place in that time?—I cannot say, because we varied the times of our meeting; sometimes we met once a week, and sometimes not so often.

And this was to animate your fellow-citizens in the same cause?—Yes.

Did you propose to petition parliament for a parliamentary reform at that time?—I do not remember that being proposed in the Address; and what we were to do afterwards was to be guided by circumstances; we were not sure as to that of petitioning any more; we had not come to our resolution in that point.

Thomas Ivory sworn.—Examined by Mr. *Burnett*.

Q. What profession are you of?—*A.* A watch-maker in Dundee.

Do you know of any societies in the town of Dundee that went by any particular name?—Yes, I do,

What names had they?—I know the society of the Friends of the Constitution, and a society under the name of the Friends of Liberty.

Where did the society of the Friends of Liberty meet at Dundee?—In the Berean Meeting-house.

Lord *Eskgrove*.—It is fit that I should tell you, that nothing that you can say in point of fact, with respect to yourself, can at all affect you at any future time: you have nothing to fear; but to tell the truth.

Mr. *Burnett*. Were you a member of the society of the Friends of Liberty?—I was a member.

At what time did you become a member? do you recollect?—I cannot be pointed as to that.

A considerable time ago?—Yes.

Do you remember, upon any particular occasion, being present at that meeting when a manuscript was produced and read?—Yes, I was present.

Do you remember what time that was?—I do not positively recollect the date; but I think about six weeks ago, perhaps more.

Who was it produced that manuscript?—I was not there when it was introduced; it was in a person's hand when I saw it.

In whose hand was it?—In George Mealmaker's hand.

What was the tenor of that manuscript so far as you remember? what title had it?—It was an address to the people.

What was the tenor of it, as far as you remember?—I did not attend much to it, as it did not meet much with my own approbation.

Upon what grounds did you disapprove of it?—I did not agree to the arguments contained in it, nor the matter contained in it.

What was the matter, so far as you recollect?—I never attended much to the paper. If I was hearing it read, I could probably tell what displeased me in it.

What kind of a paper was it—a pamphlet, or a book, or what?—It was a short address, contained upon a page of paper, I think.

Should you know that address by seeing a copy of it?—I think I would.

Was it a manuscript or a printed copy that was produced?—I heard a manuscript copy read.

Had you the manuscript in your own hand?—No, never.

Then it is only to the substance of it that you can speak?—I saw that copy once in the town-house of Dundee; but that was not the copy produced at the meeting, I think.

Read it.—I think this is the copy, at least the substance of the copy.

Are you acquainted with Mr. Fyshe Palmer?—I know him by sight.

Was he present at that meeting?—Yes, he was.

Was there any debate?—Did any of the members speak about the manuscript?—Yes, Mr. Palmer spoke with regard to something in the written copy, as being too strong.

Were there any alterations made that were adopted upon that paper?—If I remember distinctly, I think some things were rendered into questions which were in the written copy assertions.

Lord *Abercromby*.—Who was it that converted the assertions into questions?—I think Mr. Palmer did it.

Mr. *Burnett*.—Did you hear any thing about printing that paper?—I do not remember hearing any thing with regard to the printing of it.

Do you know the purpose of that meeting?—I understood the purpose of the meeting was to approve or reject the paper then produced.

Did you remain the whole time of the meeting?—No, I remained a very short time.

What passed respecting that manuscript?

—I do not recollect any thing, except the small alterations I now mentioned.

Mr. Maconochie.—Did they come to the resolution of printing the manuscript while you were there?—Not that I remember. I think it was to be submitted afterwards to some committee. I think some of the members of the meeting spoke to that purpose.

But you did not stay?—No, I staid but a short time.

Mr. Burnett.—Do you remember seeing this manuscript after it was printed?—I never saw the manuscript after it was printed.

But did you see the paper?—Yes, I saw it posted up in different parts of the town.

Did you see any of those printed papers in Mr. Palmer's possession?—I do not recollect whether I did or not. I think I never was in Mr. Palmer's company to see him after that night.

Have you had occasion to be acquainted with the hand-writing of Mr. Fyshe Palmer?—I have seen it.

Do you think you should know any writing of his that was shown to you?—I cannot say that I positively would know; but I might discern a resemblance probably.

Look at those. [showing him some papers] —I think it bears some resemblance. I cannot say for these two last ones: I do not think there is any great resemblance.

Look at that. [showing him the address.] —I cannot speak as to the hand-writing at all.

Are you acquainted with James Ellis at Dundee?—I cannot say that I am much acquainted with him; I know him.

Had you ever any occasion to see his hand-writing?—Never.

Look at that, [a letter] do you know that hand-writing?—I think that is like to Mr. Palmer's.

Mr. Clerk.—My lords, I wish the witness to be removed one moment: it is not to make any objection to the witness; but I am sure your lordship will see the propriety of it in what I am about to state.

[The witness ordered to withdraw.]

Mr. Clerk.—I am going to mention to your lordships a fact that has only come to my knowledge within these two minutes; and, my lords, it is this, that there is a remarkable resemblance between Mr. Palmer's hand-writing and his brother's hand-writing, who lives in England. Your lordships must know very well, that it often takes place, that there is a family likeness in hand-writings as well as in faces. I have here some of his brother's hand-writing which I wish to show him, and ask him if that is not Mr. Palmer's hand-writing. I mean to take your lordship's opinion upon it.

Lord Eskgrove.—If the public prosecutor objected to it, I do not know that the Court could allow it: but I understand they do not object to it, but wish every indulgence to be given.

[The witness called in again.]

Mr. Clerk.—I wish to ask a question or two first. You said you were present at this meeting of the Friends of Liberty when this address was canvassed?—Yes.

Did Mr. Palmer take a part in the debate?—I said before that he spoke of putting what was asserted in the written copy into questions in the printed copy.

Did Mr. Palmer propose any other alterations?—I think, although I cannot say positively, that he wished also to soften some of the other phrases. I cannot say positively as to that.

Did you propose any alterations yourself?—No, I did not.

You disapproved of it yourself?—Yes.

Please to look at that writing, do you think that resembles Mr. Palmer's hand-writing?—I cannot say I think it does. I never saw any of his hand-writing so large.

Upon what occasion did you ever see Mr. Palmer's hand-writing?—He wrote to me once from Edinburgh.

And you knew that that was his hand-writing?—No, I never said that I did positively know.

Do you know that that letter which you received from Edinburgh, was the hand-writing of Mr. Palmer?—It was signed by Mr. Palmer, and had a strong resemblance to some titles that I have seen on books of Mr. Palmer's.

James Matthew sworn.—Examined by Mr. *Burnett.*

Were you a member of any society in the town of Dundee?—Yes.

What society were you a member of?—The society of the Friends of Liberty.

Are you acquainted with Thomas Fyshe Palmer?—I know that gentleman. I always called him Mr. Palmer.

Did you see Mr. Palmer at any of those meetings?—Yes.

Do you remember any manuscript being produced at that meeting?—Yes.

Do you remember an Address to the Friends of Liberty?—No, I remember an Address to Fellow Citizens.

Was Mr. Palmer present at that meeting?—If I remember right, he was.

Who produced that address?—I did not see it produced.

In whose hand was it?—I cannot remember. It went from hand to hand. I believe I had it in my own hand.

Did you hear it read?—Not wholly through, I heard it read paragraph and paragraph.

Was there any debate upon it?—Yes.

Did Mr. Palmer speak upon that occasion?—Yes.

Did you hear what he said?—The substance of it was, whether it should be printed or not.

What do you remember Mr. Palmer saying then?—I remember he spoke against printing it.

You heard it read, Would you know the paper again if you were to see it, and read it over; was it the printed or the manuscript copy that you heard read?—A manuscript.

Do you know if it was printed?—I cannot say. I saw a printed paper afterwards that I thought was it.

Look at this printed paper, and see whether you think that was the paper you heard read in substance?—Yes, I dare say that is the paper.

Where did you see the printed copy? Did you get any printed copies from any person?—I had some left at my house one night, when I was not at home.

Do you know who left them?—No, I never inquired, and nobody told me.

Did you see any other copies besides those left in your house?—I have seen several pasted up in the town.

Do you know if the meeting ordered any person to print it?—I remember there was a desire to get it printed.

Who was desired to get it printed?—Mr. Palmer.

Did Mr. Palmer undertake to do it?—I heard him refuse to write it; they wished him to write it over again, and he refused to do that.

Did any person agree to copy it, or did you see any person copy it?—No, I did not.

Are you acquainted with a man of the name of James Ellis?—Yes, I know him.

Was he at that meeting?—Yes.

Do you know what was the purpose of the society in ordering that manuscript to be printed?—The reason was merely to call people's minds to the business of reform.

Do you know Ellis's hand-writing?—I am not acquainted with it.

Did you hear any thing said in that meeting about distributing this paper?—It was a general instruction from the meeting to tell every member to distribute it.

Are you acquainted with the hand-writing of Mr. Palmer?—I have seen some papers that I have thought was his hand-writing; but I cannot say I ever saw him write.

Look at this letter, and see if you think that is Mr. Palmer's hand-writing?—I see a similarity between that and some papers that I have thought were his.

Did you hold any office in the society?—Not at that time.

Lord *Eskgrove*. Have you ever been president of the society?—Yes, I have.

Mr. *Burnett*. Were you ever in possession of any letter written by Mr. Palmer?—I cannot tell if I was in possession of a letter wrote by him, because I am not a proper judge whether it was his or not.

Were you in possession of any letter that was signed by a person of that name?—I have been in possession of letters signed T. F. P. and T. F. Palmer.

Look at that letter, and see if you were ever in possession of it. Look at it, and make yourself certain?—I certainly think I have been in possession of that letter.

Did you deliver this letter to any person?—No.

Did any person get it in your custody?—It was taken out of my pocket-book, if I remember right, by a gentleman that I did not know: his name I heard; he came from Edinburgh.

Where was it?—In my own house.

Do you know William Moncrief?—Yes, he was present.

Was any person paid for the printing of this paper?—I saw it paid one night.

Whom was it paid to?—It was paid to Mr. Palmer.

And by whom was it paid?—It was paid by a member of the society, George Luke, who was treasurer at that time, if I remember right.

Was there a man of the name of Ross that was treasurer there?—I do not know.

Do you know if there was any book kept by the society?—Yes, there was one book kept.

Do you know of any leaves being destroyed?—The last time that I saw it, it was entire.

Did you know of any leaves being taken out?—It was reported so; but I did not know any thing of it.

Lord *Eskgrove*. Would you know the book if you were to see it again?—That is nearly the size of the book; but it was thicker, and there was some writing in it.

Do you think this hand-writing is the hand-writing of Mr. Palmer?—I think it is something like the letters that I had.

Are they his hand-writing?—I cannot make up my mind as to that; only I think it is something similar to what I have thought was his writing.

Mr. *Burnett*. Look at that letter, and see if you can speak as to that; is that the hand-writing of Mr. Palmer, as far as you know and believe?—I cannot say but there is a similarity; one is a letter addressed to Mr. Skirving, and another a fragment of a letter; and the other is a letter to Mr. Ellis.

You speak of a letter in your possession addressed to Ellis?—Yes.

How came you by it?—I had it from Ellis; he gave it to me about some money transactions.

James Matthew cross-examined by Mr. *Haggart*.

You say, that a man from Edinburgh came and took your pocket-book from you—how came he to do that?—I was seized some days before, and was obliged to find bail: I was seized on Monday morning after breakfast: I was taken into my own house; he desired me to open my trunk, and he searched the house: he asked me what I had in my pockets; I argued against that; and he told me, if I did not do it peaceably, he must force me; and

then took my papers out of my pocket-book.

Did he show you any warrant that he had for doing so?—No.

You said, that this written form of the Address was submitted to the consideration of the meeting?—Yes.

Was there any debate upon that?—Yes.

What was the nature of the debate, and who took part in it?—It was whether it should be printed; and whether it should be printed in a newspaper, or how; and concerning some alterations that they wished to make in it.

Which of the members proposed printing it in a newspaper?—Mr. Palmer.

Was he out-voted?—Yes. I helped to do so.

Was Mr. Palmer one of the people, or who was it that were for altering the terms of it?—Different people; and I believe myself likewise proposed alterations.

What sort of alterations did he propose?—The principal design of them was; as the society had nothing but good intentions, he wished to make it so as to give offence to nobody.

Lord *Eskgrove*.—Were they adopted?—They were some of them.

Was Mr. Palmer out-voted in those softening alterations?—In some of them he was.

What was Mr. Palmer's reason for putting it in the newspapers?—The principal reason that he assigned, was the saving of expense.

Mr. *Clerk*.—Do you know who made the original draught of the address?—I know who owned it to be theirs.

Who was it?—George Mealmaker.

What did Mealmaker do, or say at this general meeting, when the address was under consideration?—He spoke of it just as a man would, who had a work of his own under consideration.

Do you remember any thing particular, that he said?—Nothing particular, more than in a general way acknowledging it to be his; when alterations were proposed, he defended the original copy.

Did he defend it with obstinacy?—Sometimes, he certainly defended it with a good degree of obstinacy; he was anxious to have it continued as it was.

Was there any of the meeting that suspected it was an illegal paper?—No, I believe not; for my own part, I had no thought of it.

What purpose did you mean to accomplish by it?—My own idea was to call the people's attention to the object of a parliamentary reform.

Mr. *Maconochie*.—What did you understand, when you desired the people to gather round the fabric of liberty to support it?—What I understood by it was, that it was just to join in petitioning parliament.

What did you mean by telling them, that it was in vain to petition parliament, that you were not disappointed by the decision of the House of Commons concerning your petition, and that it was a question you did not expect (though founded on truth and reason), would be supported by superior numbers? Was that encouraging people to present another petition?—What we meant by it was, that we thought we could not get it this session; but we were not so much disappointed, as not to endeavour to petition again next session.

Was it pasted up in Dundee in several places?—Yes.

Mr. *Haggart*.—This gentleman asked you the meaning of one passage of this paper, but you will be so good as answer me, and tell me what you mean by different passages of it. In the second paragraph "In spite of the virulent scandal," &c. [See the copy of the Address, in the indictment].—Our idea was, that, as we thought the representation in parliament was now confined to a few, instead of being general, if people could get it more general it would be better.

Now the next paragraph—"Is not every new day adding." [See the copy of the Address, in the Indictment].—That was just what we thought; that there was a coalition against us; and that there was a proof, that they were not so ready to listen to us as they ought to be.

Lord *Eskgrove*.—You cannot go through these paragraphs in this way; we cannot hear his opinion of them.

James Ellis, jun. sworn.—Examined by Mr. *Maconochie*.

Where have you resided for some time past?—In the house of Mr. Palmer.

Where?—In Dundee.

Are you a member of any of the societies in Dundee?—Yes, I am a member of both of them.

How long have you been a member of those two societies?—I have been a member of them about eight weeks.

Is Mr. Palmer a member of them?—He is a member of one of them.

Was he admitted before you?—I believe we were both admitted the same night.

Do you remember what passed that night?—Yes. The chief thing was an address to be presented to our fellow citizens.

What was the title of that address?—I do not recollect that it had any title.

Was it in manuscript?—It was.

Do you know whose hand-writing the manuscript was?—I certainly do know whose it was. I am certain it was in the hand-writing of a lad of the name of George Mealmaker.

Was all of it his hand-writing?—Yes.

Were there any alterations in any other hand-writing?—Yes. There was one word.

Had you it in your hand?—I had.

Did you read it?—Yes.

And it was all his hand-writing, except one word?—It was.

What was that word?—Either hurling, or dragging; I cannot say which.

Whose hand-writing was that?—I cannot tell.

Did the society make any alterations in it?—Yes.

In whose hand-writing were they made?—I cannot recollect.

Were any of them made by Mr. Palmer?—Not that I know of.

You were there all that time, were not you?—Yes. I recollect that several people had the Address in their hands, and several people had pens in their hands; but I cannot say who made the alterations.

Was it ordered to be printed by the meeting?—It was.

And who undertook to print it?—I did.

Did any body else say any thing about it?—Mr. Palmer said he could safely get it printed; and I am not certain whether he undertook it, but we were both together.

Was it delivered to you, or to Mr. Palmer?—It was delivered to me. I wrote a copy for the press, and left the original copy lying in Mr. Palmer's house; and I do not know what became of it afterwards.

What became of your copy?—I was taken ill, and I do not know what became of it.

Did you ever see it after it was printed?—I have seen it several times since it was printed.

Have you seen it in Mr. Palmer's house since?—Yes.

Do you know whether it was paid for, or not?—I do not know.

Do you know whose printing office it was printed at?—No.

You never heard?—No.

Did you inform the meeting, that you knew a person who would print it?—I informed the meeting, that I would get it printed.

Was there any person that you and Mr. Palmer had agreed upon should print it, after you had wrote it?—No.

You left the manuscript?—Yes.

You had no conversation with Mr. Palmer about the printing of it afterwards?—None.

Is that your hand-writing?—Yes, I believe it is.

Was that the copy you wrote for the press?—I will not pretend to say that.

Did you write no other copy?—No.

Then that must be the copy you wrote for the press.—Certainly.

Look at the date; is that your hand-writing?—No, that is not my hand I think.

Whose hand is that, to the best of your knowledge and belief?—I am sure I could not say whose hand-writing that is.

Lord *Abercromby*.—You are upon oath; and if there is no absolute certainty, you are bound to tell the Court and jury what your belief is?—My lord, I can only believe a thing that I know to be certain; and, if I have but slight grounds for my belief, it is rather supposition than belief.

You are really bound by your oath to tell all that you believe, with regard to that letter; and, as to the hand-writing, you are bound to tell it; and if you do not tell it, you swear falsely.—My lord, I am so conscious of the seriousness of the oath I have taken, that I am really not to say any thing but what I know, because I may be vastly mistaken.

You may be mistaken, but you are bound to tell what your belief is.—I can only say, that it is like Mr. Palmer's writing, but I can say nothing farther.

Look at that letter; did you ever see that letter before?—I do not know whether I ever did or not.

That is a letter addressed to you; you are desired to read it; and having read it, you are desired by the oath of God to say, whether you ever saw it before or not?—I can only say, that I have seen a letter similar to that.

Similar in writing?—Yes.

And similar in matter?—Yes; but I vastly dislike suppositions.

Do you believe it to be the same letter?—It has every appearance of it.

Do you believe it to be the same? If you do believe it and do not say it, you are guilty of perjury, and the Court will act with you accordingly. The question to you is a plain one. Do you believe the letter in your hand to be a letter which you have formerly received?—I received a letter from Mr. Palmer similar to that, but this direction here, I believe, is different; and therefore I am not to go upon a thing that I am not absolutely certain of. I rather think that the letter, that I received from Mr. Palmer, was not addressed to Mr. Ellis.

You are, upon your oath, bound to say, whether you think it is that letter that you received from Mr. Palmer, yea or no?—I have told your lordship my reasons for doubting it.

I really must caution you; you now stand upon the brink of a precipice: you say, you received a letter from Mr. Palmer, the substance of which appears to be the same with that, and the hand-writing appears to be the same; now, what became of that letter which you received from Mr. Palmer?—I gave it to James Matthew.

Did you never get it back from him?—No.

Did he ever tell you what he made of it, or what became of it?—I do not recollect his ever telling me where it went.

Mr. *Maconochie*.—Did you ever hear or not what became of it?—Yes, I have heard from the report of the town, which every body heard, that it was delivered to a man who came from Edinburgh to Dundee.

Lord *Abercromby*.—For your own sake, I must again put that letter into your hand to read it over again, and say upon your great oath, whether that is the letter you received from Mr. Palmer, yea, or no, and which you gave to James Matthew; and you will attend to the date of it, and to the secret date of it. Now do you, or not, believe that letter to be

the same letter that you received from Mr. Palmer, and which you gave to James Matthew?—I believe it is. I have now reason to think it is.

Why did not you say so before?—Because I want to go upon absolute certainty.

Mr. *Maconochie.*—Look at that paragraph; is it with regard to a printer?—Do you know any thing about the printer?—I have heard reports.

You are quite ignorant from that letter, who is the printer of it?—I am quite ignorant of it.

Lord *Abercromby.*—(reads.) "My letter to Smiton, and part of my letter to the printer's brother are in evidence against me." Now, will you say that Mr. Palmer never told you who was the printer?—No.

Did he never write to you who was the printer?—No, he speaks of the printer's brother.

Mr. *Burnett.*—Do you know your own hand-writing when you see it?—Yes.

Is that your hand-writing? *(showing him a letter.)*—Yes, indeed is it.

James Ellis, jun. cross-examined by Mr. *Haggart.*

Do you recollect being in company with Mr. Palmer some time in the month of June last? Where is Mr. Palmer's house?—In the town of Dundee.

Is it up a close?—Yes, it goes by the name of the Methodist Close.

Were you in Mr. Palmer's house in the month of June last?—I do not think I was.

Do you recollect Mr. Palmer and you coming out of his house together?—I do not recollect that.

Were you ever in company with Mr. Palmer in the month of June last, when any people stopped you and him in the street?—I remember being in company with him, when somebody stopped us in the Close.

Do you recollect who stopped you?—George Mealmaker was one.

What is he?—A weaver in Dundee.

One of the witnesses here?—Yes.

Do you recollect any other name?—Yes, there was one Alexander Wood.

Is he a witness too?—Yes.

Was there any other body?—I believe there were one or two, but I do not recollect their names.

Do you remember what passed upon that occasion?—Yes, Mr. Palmer and I were going up to Mr. Palmer's house, and those people stopped us in the Close, and George said to Mr. Palmer, I belong to a society of the Friends of Liberty, that meet in this Berean Meeting-house above here, and told Mr. Palmer at the same time, that they intended to publish an address to their fellow citizens, and that they would be very glad of Mr. Palmer's assistance in it. Mr. Palmer asked them what number of you meet there, and what are they that compose your society? and Mealmaker, I think it was, answered; says he, there are a vast number that belong to the society, but there are not more than 30 that regularly meet there; and we are composed chiefly of tradesmen and labourers. Then, says Mr. Palmer, you are so few in number, I think it is a great folly in you to think of publishing any thing; it would answer very little purpose, and would only bring an expense upon people that are little able to bear it; and Mealmaker said, we are not like the other society, for we have money by us, and we will publish it. Mr. Palmer said, he thought it was folly to publish any thing at present, that it would be only putting them to an unnecessary expense, and he advised them to publish nothing; and he made that answer, that they had money by them, and were determined to publish. Then I went back with them, and said, if you are determined to publish, I think two or three of you should draw up an address, and bring it with you; and that which best pleased the society, should be adopted—and we parted upon that; however, I asked Mr. Palmer to be so good as attend their next meeting.

Was not Mr. Palmer a member?—No, he was not at that time; they asked it as a favour that he would attend their meeting.

Did Mr. Palmer accordingly attend, do you know?—I believe he did. The next day I said to Mr. Palmer, Have you written any thing for these lads yet? and Mr. Palmer said, No; he did not intend to write any thing; he thought it was only bringing an expense upon them that they were little able to bear. I said, I think you are vastly mistaken; there is very little written upon that subject, and I wish you would write something; and I asked him, day after day, to do it, and he always put it off. He went to the society; and when he came back, I asked what they had done? and he said, some of them had given an address to him to look over and correct. I determined to go to the next meeting; and I saw Mr. Palmer deliver back this address to Mealmaker into his hand, and he said, As I am not a member, I have not taken the liberty to alter a single word but one.

What word was it?—Something about hurling or dragging; except, says Mr. Palmer, what relates to the grammar and to the spelling. Mr. Palmer said at the same time, I would not have you publish this; at least, says he, if you do, it must be materially altered; and Mealmaker said, when I wrote that address, I was conscious to myself that there was not one word in it but was true; and, if it is materially altered, I will scratch out my name in the book. After that, Mr. Palmer desired that it should be debated, clause by clause; but it was first put, whether they should publish or not? which was carried; and the next question was, what they should publish? and then they debated it, clause by clause; and a number of alterations were made.

Who took a part in it?—Myself and Mr. Donaldson. Mr. Donaldson suggested a motion to me.

Did any body take part in the debate besides yourself and Mr. Donaldson?—Mr. Palmer took part in it.

What was the nature of the part that he took in it?—Mr. Palmer desired them frequently, If you do publish, you must soften a number of those phrases; not, says he, but I believe that every word in it is really as true as the Gospel; but the people in power will be vastly ready to make a handle of it against you: he said, that it might be laid hold of by the people in power, and they would get into trouble.

What was the avowed intention of the meeting in publishing that paper? What was their object?—Their object was to induce their neighbours to join with them, to procure a reformation in parliament by all peaceable means; to awaken the minds of the people, that they should join together, and petition the legislature for the removal of what we consider as grievances.

What were the reforms you pointed at?—A more equal representation of the people. He earnestly advised them not to publish at all, but, if they did, every word that was offensive he desired to be altered; and it was often carried against him; and, when put to the vote, they were ordered to stand.

It was George Mealmaker who wrote this paper?—Yes.

How do you know that he was the person that wrote it?—He says to Mr. Palmer, when we were going out, I would thank you to write over a clean copy for the press, for my hand is not easily read; and he asked me to do it, and I did it.

Did you see Mr. Palmer return it to Mealmaker?—Yes; I did it at the next meeting.

Did Mr. Palmer pay the expense of publishing this paper?—I saw Mr. Palmer get the money in the society one evening for publishing it; it was paid in my presence.

Mr. *Maconochie*—I asked him before, and he said he knew nothing about the payment of it.—I believe not; if I did say so, I was under a vast mistake.

Mr. *Haggart*—What did you understand to be the meaning of that address? Did you suppose it to be any thing farther than for a reform in parliament? or what was your opinion of it?—I can only answer for myself, that there was no seditious intention in it; for I made a motion afterwards, that a name might be put to it; for as there was no name to it, they would say we wished to steal into the world; and we were sorry that those in power should think that we meant any thing wicked.

Lord *Abercromby*—In what capacity did you live with Mr. Palmer?—As a visitor merely, nothing farther.

Alexander Morrin called in.

(Ordered to withdraw.)

Mr. *Clerk*—I object, that no such person is cited as a witness upon this trial. There is a Mr. Moran cited as a witness, but not the person who was in the presence of the Court a little time ago; the name is spelt wrong; there is a variation of one letter.

Mr. *Burnett*.—I submit to your lordship, that this is the same objection that was repelled by the Court in the outset.

Lord *Abercromby*—It is no objection at all.

The Witness sworn.

(Examined by Mr. *Burnett*.)

Do you remember being in possession of any printed Address to Friends and Fellow-citizens?—Yes.

How many of them had you in your possession?—I had what they called 1,000 copies in my possession.

Where did you get them from?—From the printer.

Do you remember, upon your oath,—and think before you answer the question that I am to put to you,—What printer did you get them from?—From my brother.

What is his name?—John Morrin.

Was he the printer of them?—I believe so.

Do you know by whose orders these papers were printed?—Yes.

Who ordered them to be printed?—It was Mr. Palmer.

How do you know that?—I got a letter from him; but I do not know whether it is his hand-writing or not.

Had you ever received any letters from him before?—Yes, but I never saw him write.

Did you think that it came from Mr. Palmer?—Yes.

Was it signed by Mr. Palmer?—Yes; it was signed with his initials.

Was there any manuscript copy sent to you to get printed?—Yes.

Who sent it?—Mr. Palmer.

Look at that paper, and see whether that is it or not?—Yes; it is.

Did that piece of a letter come with it?—No.

Look at that.—This is the paper that came along with it.

When did you get this; before or afterwards?—I think I got it before.

Are you sure you got it at all?—I think so.

Look again, and be certain whether you got it or no?—I got it before, but there was nothing printed from it.

Do you know any thing about the tearing of these letters?—No, I know nothing about it, except by accident: I did not think they were of any consequence.

What became of them after you got them? were they torn while they were in your possession?—Yes; I suppose so.

How got they out of your possession?—The

officers came and searched my shop; and I actually did not know there were such papers.

Do you observe any alterations made in them since?—No.

Was the manuscript got at that time?—Yes, upon the search.

Were you present at the search?—Yes.

Had you any directions to destroy the letters, or the manuscript, either the one or the other?—No; I had no orders to destroy them.

Not from any body?—No.

Look at that; what is it?—A paper that was found by the officers in my possession.

Did you send off the principal?—No.

It was intended to have been a letter?—Yes.

To whom?—To Mr. Palmer.

What did you do with the 1,000 copies that you got from your brother?—I sent them, as desired, to Dundee.

Did you send them all to Dundee?—I kept 120 copies.

You sent the rest to Dundee?—Yes; I was desired to give 100 copies to Mr. Skirving.

And you kept them for him?—Yes.

And did he get them from you?—Yes.

Did he call for them, or send for them?—He sent for them.

To whose address did you send those that you sent to Dundee?—The person that desired me to get them.

Who was that?—Mr. Palmer.

Which way did you send them?—By the carrier.

Did you send 900 to Dundee then?—I imagine so; I did not count them.

Did Mr. Skirving get the whole 120?—No; he got but 100.

What became of the 20?—They were left in my shop.

Did you part with any of them?—Yes; I gave some odd ones of them away.

Did Mr. Palmer apply to you afterwards about them?—No.

Did you ever hear from Mr. Palmer after he had got the rest of the 1,000 copies?—No.

Did you get any payment for them from any person?—No.

Do you know if your brother was paid?—I cannot tell.

John Morrin sworn.—Examined by Mr. *Maconochie.*

Were you employed to print an address to the Friends of Liberty at Dundee?—Yes.

Who employed you?—My brother.

How many were printed?—4 or 500, I imagine.

Were you paid for it?—No.

You never were paid?—No; never.

Did you know who employed you?—It was my brother.

Did he promise you payment?—Yes.

Do you know who set him upon the business?—No.

Did you ever ask him?—No.

Did you send him all that were thrown off?—Yes.

Did you debit him in your account-book for them?—No; I have no account-books.

Look at that; is that the one that you printed?—It looks like it; another might print it just in the same manner.

Look at that: Is that the manuscript that you printed from?—I dare say it is.

George M'Intosh sworn.—Examined by Mr. *Maconochie.*

You are a clerk to Mr. Handyside in Edinburgh?—Yes.

Do you remember ever getting a copy of a printed address?—Yes, I got many a one.

What address is it? Is it an address to Friends and Fellow Citizens?—I would know it if I saw it.

Look at it.—Yes; I have seen that paper.

Had you them in your possession?—Yes.

Who gave them you?—Mr. Morrin; he gave me only one.

Did you see any more copies of that address?—Yes, in sheriff-Clerk's chamber.

No where else?—No.

William Middleton sworn.—Examined by Mr. *Maconochie.*

Were you employed to search the house of Mr. Skirving?—Yes.

Who was with you?—Mr. Dingwall, Mr. Joseph Mack, and Andrew Scott, a sheriff's officer.

Was Skirving present?—Yes.

What did you find in that search?—There was a letter found in a writing-desk, said to be wrote by Mr. Palmer to Mr. Skirving.

Is that the letter (showing it to him)?—Yes.

[It is read, addressed to Mr. Skirving, dated Dundee, July 9, 1793.]

Letter from Mr. Palmer to Mr. Skirving, *Dundee, July 9th*, 1793.

Dear Sir; I wrote to you some time ago, wishing to see Mr. Wharton's answer, when it came to hand. M'Farlane sets out on Friday, and if you deliver a letter or parcel on the Thursday, it will be time enough. I wish you would send me some of the books on the Liberty of the Press.

The Friends of Liberty have sent to Mr. Morren an address to get printed. It was written by a common weaver, I think it admirable. We want a copy to be sent to all the societies of the Friends of the People, if you will take that trouble. You may ask Mr. Morren, grocer, Luckenbooths, for 300 copies; if you wish to decline the trouble, send me a paper with the address of each society, and take 50 or 100 for the use of Edinburgh.

I would have you write to Mr. Roberts, writer in Forfar, he has long had money by him for the use of the convention. You may apply at the same time for the payment of an advertisement in the Chronicle and the Gazetteer.

The Friends go on here with some degree of spirit, they have introduced the practice of reading letters, extracts, and small pamphlets, and then enforcing them by argument, which seems to be likely to produce much good.

Let me hear from you by the return of the carrier, and tell me all the political news with you. Dudhope Castle, close by this town, is going to be converted into Barracks, to keep down any efforts for our freedom. A ship master just come from Glasgow says, nothing was ever like the distress at Glasgow, that while he was there, two men dropt down dead in the streets, famished for want of food.

Yours, with best remembrance to all friends,
(Signed) T. F. PALMER.

You found that letter in the house of Skirving?—Yes, in the writing-desk and bureau.

Look at that paper.—There were several copies of that delivered to me by Mr. Skirving.

You were likewise employed to search Morrin's shop?—Yes.

Morrin was present?—Yes.

Did you find any copies of that paper in his house?—Yes; a few.

Are those the papers you found in his house?—Yes.

Edward Leslie sworn.—Examined by Mr. *Burnett*.

You are a stationer in Dundee?—Yes.

Do you remember receiving a letter from a Mr. Ross?—Yes.

At what time did you receive it?—I cannot charge my memory with the time.

Do you remember the direction of the letter?—It was directed to me, but addressed to another man.

Do you remember having in your possession any printed copies of an address, to Friends and Fellow-citizens?—Yes.

Whom did you get those printed copies from?—From Mr. Palmer.

Can you tell what time this was?—I cannot recollect the time.

In what way did you get them?—He gave me them with his own hand.

How many copies?—I never counted them.

How many do you suppose?—I can form no idea of it.

Were they put up in a bundle?—No.

Were there two copies or more?—There was more than half a dozen of them; and I locked them by.

What did Mr. Palmer say to you, when he gave you them?—Nothing at all.

For what purpose did you suppose he gave them you?—I supposed to give away.

Did you give them away?—Two or three copies I did, to the best of my remembrance.

What became of them?—I burnt them.

What made you burn them?—Because I thought it was not safe to have them in my custody.

Do you know whether Mr. Palmer gave them to any body else?—I believe he gave some to Mr. Miller the bookseller.

Mr. *Haggart*.—You say you burnt these copies, had you heard of any searching?—It was after Mr. Palmer was taken up, that I burnt them.

David Miller, sworn.—Examined by Mr. *Maconochie*.

Look at that—did you ever see a copy of that production before?—Yes, I have.

Upon what occasion did you see it?—It was brought into my shop by Mr. Palmer.

Were there any considerable number of them?—A few.

Were there half a dozen?—I dare say there was that.

A dozen?—I cannot say, for I did not count them.

Did you get any orders from Mr. Palmer relative to it?—No; upon my oath I cannot say that I did.

What did he say?—He said, it was a wonderful composition to be the production of a common weaver.—I supposed that they were to be given away.

Did you understand, when you got them, that they were to give away?—It was natural to suppose so, when they were brought to me in that way—Mr. Palmer did not say they were to give away.

Did you distribute any of them?—Not to my knowledge.

What did you do with them?—I took them off my counter; and there is a board that covers over where I cut my paper; I put them in there; and some little time after burnt them.

Why did you burn them?—I did not like them; I suspected that some mischief might arise from them.

You did that, before any notice was taken of them?—I cannot say, whether it was or not—they lay in my shaving-tub some considerable time.

James Smiton, sworn.—Examined by Mr. *Maconochie*.

Did you receive that letter? [Showing it him.]—Yes.

Whom is it wrote by?—I suppose it is written by the person who signs it.

Who signs it?—It is signed T. F. Palmer, but I do not think it is his signature.

What makes you think it is not his signature?—I think the name has been added; I am pretty positive it has.

Did you give that letter to the sheriff of Fife?—Yes.

Was not Mr. Palmer's name to it, when you put your subscription upon it?—The initials were, but not the full name.

That you say upon your oath, that the initials only were there, and not the full name?—Yes.

Do you know who put it there?—No.

What were the initials?—T. F. P.

Look again, and be certain before you speak; now, remember you are upon your oath, and you are asked that question. Consider before you speak.—I will not swear to the letters, but I will swear that the name was not at full length.

Lord *Eskgrove.*—You say upon your oath that there was nothing but the initials when you received it?—Yes.

Mr. *Maconochie.*—Do you know Mr. Palmer's hand-writing?—I never saw him write.

Have you ever received letters from him?—Yes.

Is that the same hand-writing with the other letters you received?—Yes; I think it is.

The letter read as follows:

Letter to JAMES SMITON, Newburgh, (signed) T. F. PALMER.

My dear Friend; If I was severe in reproof, it was far from my intention. I would not, on any account, give you pain. The account you give of the pamphlets is curious. They shall soon be replaced, when I can get them in. Have you a copy of the Letters to Philosophers? I send you some addresses written by a common weaver, some Wharton's speeches, and one incomparable address on barracks.

I will send you by-and-by a book on America; my friend, if you could but muster cash enough to go with me, I could almost trust you, to live my days with you. James Ellis, David Hughes, and family, talk of going with me. Dr. Priestley cannot sleep quietly in his bed owing to the unceasing persecutions of the high church party, and he is going also; his four sons are there. He has been obliged more than once since he has been at Hackney to leave his house, least he should be burnt alive.

The patriots have defeated the rebels at Nantz, 8,000 killed, 700 taken prisoners.

Have you not Cooper's pamphlet; I mean his answer to Burke?

John Ballingall was here, went away on a Sunday, never called, and never meant to worship with us. I heard Pirie to my no small entertainment; it requires some ingenuity to be so excessively absurd. Farewell, your's.

(Signed) T. F. PALMER.

July 20, 1773.

I have got three copies of the Address to Protestant Clergy to sell. If you or others have a mind to purchase a copy of Letters to Philosophers, I will order it from London. Both pamphlets are one shilling each.

Did you receive any copies of the printed paper with that letter?—Yes.

How many?—I did not count them.

Were there a dozen?—I believe there might, but I did not count them.

Did you read the address?—Yes.

Did you give them away to any body?—Yes.

Whom did you give them to?—I gave one to a Mr. Harwood, one to Mr. Fisher, and one to James Blyth, and one to John Ballingall; and I do not recollect that I gave any to any body else.

Who sent you them?—They came with a letter.

Mr. *Haggart.*—In that letter, which is said to have been written by Mr. Palmer to you, some pamphlets are mentioned and recommended in it; what was the nature of those pamphlets? were they of a religious or of a political kind?—One was a religious pamphlet, and the other a political one. One was an Address to Protestant Clergy, entirely on the subject of religion; and the other was Horne Tooke's Trial.

Mr. *Burnett.*—Gentlemen, the parole evidence on the part of the prosecution being now closed, there are several papers which will be read to you in evidence, and amongst others the declaration of Mr. Palmer himself.

Declaration emitted by Mr. Palmer, at Edinburgh, the second day of August, seventeen hundred and ninety-three years.

The which day, compeared in presence of Harry Davidson, esquire, sheriff substitute of the shire of Edinburgh, Mr. Thomas Fische Palmer, clergyman in Dundee, presently in Edinburgh, who being examined and interrogate, when he went last to Dundee, he answered, That, not knowing the tendency of the questions to be put to him, and being unacquainted with the law of Scotland, and not having seen the petition upon which he has been brought to town, he declines answering this or any other question that may be put to him; and being interrogated, whether or not he is acquainted with William Skirving, of Strathruddy, residing in Edinburgh, and sometimes designed, secretary to the Friends of the People, at Edinburgh, or with Alexander Morren, grocer and spirit-dealer in Luckenbooths, Edinburgh, Mr. Palmer declares, and declines answering any questions. Being interrogate whether he has corresponded with either of those gentlemen since he went to Dundee, he declines answering any question; and being shown a part of a letter, or writing, and being asked, whether it is of his hand-writing, and whether the name, F. Palmer thereto, is of his hand-writing, declares, it is like to his hand-writing and subscription, and which writing is marked, as relative hereto; and being shown two pieces of writing, or part of a letter, now tacked together, and asked whether it is of his hand-writing, he declines answering the question, which pieces of writing is also marked as relative hereto. And being shown a writing, dated, "Dundee, Berean Meeting-house, July, 1793," and intituled

thus, "At a general meeting of the Friends of Liberty, they unanimously resolved to publish the following address to their Friends and Fellow-citizens." And being asked, if he ever saw this paper before, declines answering the question; and being asked, whether the words at the top of said writing, "Berean Meeting-house, July 1793," are of his hand-writing, he declines answering the question; and being asked by whom the said writing was wrote, with the above exception, after the date, he declines answering the question, and which is also marked as relative hereto, and being shown the copy of a letter, referred to in the declaration of Alexander Morren, of the first inst. and asked, whether or not he, the declarant, received a letter from Alexander Morren, of the like or a similar import, he declines answering the question, and which copy letter is also marked as relative hereto, of this date; and being shown a printed paper, dated "Dundee Berean Meeting-house, July, 1793," and marked as relative to the declaration of John Morren, and Peter Duff, of this date, and being asked, whether he had ever seen any printed copy, or copies of said paper, he declines answering the question; and being asked, if he corresponded with any person whatever, in Fife, or Perthshire, relative to the said printed paper, and in particular with James Smiton, Wright in Newburgh, or had ever sent him printed copies of said paper, he declines answering the question; and being shewn a letter, dated "July 20, 1793," (signed) T. F. Palmer, and beginning with, "My dear friend," and being asked, whether said letter is of his handwriting, and was subscribed by him, and to whom it was sent, he declines answering the question; which letter is also marked as relative hereto of this date: declares That when last in Edinburgh, he resided with Mrs. Donaldson, Old Assembly Closs, Edinburgh, and though he paid her off before he went to Dundee, part of his effects are still in the two rooms which he possessed in her house; and being asked whether, before leaving Edinburgh, he gave to the foresaid Alexander Morren, any written or printed papers, he declines answering the question; and being asked whether or not he is acquainted with James Matthew, weaver in Dundee, he declines answering the question; all this he declares to be truth. And after the before-written declaration was read over to Mr. Palmer, and being asked to sign his declaration, he declines to do so. And the aforesaid Mr. Thomas Fische Palmer, being again called in before the sheriff, and there having been shown to him, the petition of William Scot, procurator fiscal of the county, upon which the warrant for his apprehension was granted, of yesterday's date, and he having perused the same, the sheriff asked him, if he would now answer the questions formerly put to him, Mr. Palmer declined to make any answer to the questions, and added that it was not from any contempt of the court, and Mr. Palmer also declines signing this addition to his declaration.

Edinburgh, 3d August, 1793.

The said Mr. Thomas Fische Palmer being again examined, and his declarations of yesterday's date being read over to him, he was asked by the sheriff-substitute, whether he still adhered thereto, or would now answer the questions that were there put to him; Mr. Palmer answered, That it appears to him inconsistent with justice, to desire a man to answer questions which might criminate himself. That from his ignorance of the Scotch law, he is ignorant of the tendency of the questions, and how far he might be implicated by his answers, which, and no contempt of the authority of the sheriff, are his reasons for declining answering. And he declines to subscribe this declaration. This he declares to be truth."

(Signed) HARRY DAVIDSON.

Witnesses present at the above declaration:—William Scott, procurator fiscal, Joseph Mack, writer, and William Middleton, sheriff-officer.

Copy of Writings contained on two separate slips of paper, found in A. Morren's house, and alluded to in the foregoing depositions.

PAPER FIRST.

Dear Sir;—I will thank your brother to print three hundred copies, on a half sheet, but not long-ways like the last; but in the manner of a quarto, I think it may be contained in one half-sheet. Destroy the copy, and do not let a soul know who wrote it. You may give Skirving 50, and Mr. * * *

PAPER SECOND.

* * * * We would have * * * * * thousand printed, on one half sheet * * * * paper in pica print, that the * * * of it may be contained in the paper. * * * Mr. Skirving calls, let him have 2 or * * * what he wants, the remainder sent to me by M'Farlane, with a bill of the expense.

On another part of this paper a signature, "F. Palmer," remains.

The scroll of a Letter from Alexander Morren, intended to have been sent to T. F. Palmer.

Dear Sir;—I received your favour of the 5th inst. am very happy to hear of the progress of the Friends of Liberty in Dundee; I wish them success with all my heart. I hope this address will do good; as I think it most excellent. As you very prudently wish it kept secret, that the authors of it may not be traced, I have been thinking you should keep away the date from it, or the words at the head of it, of (Dundee Berean Meeting-house, July, 1793), and have for that pur-

pose, and to know whether the paper and print please, troubled you with these few lines, which, if you please to answer in course, you can have the number wanted this week by Mr. M'Farlane. I have called on Mr. Skirving.

(Signed) ALEX. MORREN.

Letter, signed T. F. P. to Jas. Ellis, Dundee.

In Edinburgh Jail.

Dear James;—I was imprisoned all last night, because I would not answer any questions put to me, and am now in the sheriff's chamber, waiting a second attempt.

Lest I should miss of Mr. Bowker, I inclose the note of Mr. Miles Bowker, his brother; last year he paid me on the streets of Edinburgh, 1*l.* 15*s.* thinking that was all; I thought, and said, he was wrong at the time: the bill now shows that he owes me 1*l.* 10*s.* 6*d.* more. The bill will show too for what purposes he received the money from me, now I believe near two years ago.

My letter to Smiton, part of my letter to the printer's brother, ordering them, are in evidence against me. They think James Mathew was the author. I have been permitted to see no one yet. Was not allowed bail last night, I suppose I shall this morning. Yours,

(Signed) T. F. P.

July 3, 1793.

Mr. Burnett.—The evidence on the part of the prosecution is now closed, both parole and written.

EVIDENCE ON BEHALF OF THE PANEL.

William Stewart, sworn.—Examined by Mr. *Clerk*.

Where do you live?—In Dundee.

Do you know of any societies there?—Yes; I know of two there.

Is there a society there named the Friends of the People?—The Friends of Liberty.

Are you a member?—Yes.

How long have you been a member?—I do not recollect rightly, but I have been for some time.

Do you know Mr. Palmer?—I have seen him.

Was he a member of the society?—Yes; he was a member for some time.

Do you recollect when he was admitted?—No, I do not recollect what day of the month it was.

Were you a member of the society or Mr. Palmer first?—I was first.

Do you remember any address that was published by this society?—Yes; I do.

Do you know who drew up that address?—It was drawn up by the society.

Do you know who proposed it first?—No, I do not recollect who proposed it first.

Do you recollect being alone with one or two of your companions of the same society, and meeting with Mr. Palmer in the Methodist Close?—Yes.

Who was with you?—Two lads, George Mealmaker and David Wood.

What did you say to Mr. Palmer concerning the objects of the society?—I don't recollect what passed that night; but we gave him an invitation to come to the meeting.

Was Mr. Palmer a member of the society at that time?—No; he was not.

Did Mr. Palmer go with you?—No; we had no meeting that night.

Was there a meeting of the committee soon after?—Yes.

Were you present at that meeting?—Yes; I was.

Was there any draft of an address produced that evening?—There was one laid upon the table that evening.

Do you know who composed it?—I do not know rightly who composed it; but, as far as I know, I think it was George Mealmaker.

When you consulted Mr. Palmer upon that subject, did he advise you to compose the address, or not to compose it?—I do not recollect if he advised us that night or not.

Was he for publishing an address or not?—He was for publishing it in the newspapers only.

Was he for publishing it in the newspapers at that time or afterwards?—It was afterwards.

What do you mean by afterwards?—At a meeting afterwards.

What sort of a meeting was that which took place afterwards?—A weekly meeting.

Lord *Abercromby*. A general meeting or a committee meeting?—A general meeting, held once a week.

Mr. *Clerk*. On the night that you met with Mr. Palmer was there any body with him?—There was another lad with him, but I do not know who it was.

Did you see him to-day?—It being dark, I did not take notice of him.

Did you propose to Mr. Palmer to write this address?—It was proposed before that time that an address should be made out by the society.

But did you urge Mr. Palmer to write the address?—No.

Did Mealmaker or Wood urge him to it?—I cannot recollect that.

George Luke sworn.—Examined by Mr. *Clerk*.

Where do you live?—In Dundee.

Do you know of any societies in Dundee?—Yes.

Do you belong to any of them?—Yes; I belong to the society in the Berean Meeting-house.

Were you an officer in that society?—Yes.

You were treasurer, were you?—Yes.

Do you recollect an address to Friends and Fellow-citizens being proposed in the society?—Yes.

Was it proposed to be printed?—Yes.

Was it debated in the society, Whether it should be altered and amended, or whether it should be published?—Yes, I believe it was.

Do you recollect Mr. Palmer taking any part in that debate?—Yes.

Did Mr. Palmer speak?—Yes.

Did he make any objection?—Yes, he wanted it not to be printed in a hand-bill.

Lord *Abercromby*. Did he wish it to be printed any other way?—I do not recollect.

Mr. *Clerk*.—Do you recollect any alterations being made in the course of the debate?—I do not know.

Were you there during the whole of the debate?—Yes; but I was not in office at that time; I went out, I believe, before it was all debated.

Do you know George Mealmaker?—Yes.

Did he speak in the course of the debate?—I do not properly recollect that.

Mr. *Burnett*.—Gentlemen of the Jury; Gentlemen, in discharging this part of my duty, which requires of me to state to you the purport of the evidence which has been laid before you in this case, upon the part of the prosecutor, I know, I shall meet with this concurrence of sentiment in all of you, that this is a cause of the utmost importance to the country in general. When you consider the nature of the offence charged against this panel, and when you consider the party himself, who now stands at the bar, and I will add, the consequences which the verdict that you may pronounce in this case, may have upon the minds of the people at large, you will readily see the importance of the task before you.

Gentlemen, the crime stated in this indictment is properly that of sedition, committed by writing, and composing, and circulating a seditious and inflammatory paper, calculated to create a spirit of opposition to the established government, to raise a ferment in the minds of the people, and to bring along with it all those evils that popular fury and insurrection occasion.

Gentlemen, this offence, when all the evils attending upon popular fury and insurrection are considered, I am confident all of you will join with me in thinking to be one which stands foremost in the list of human crimes: for your own experience may teach you,—history, and that of a very modern date, may teach you, that when people are once roused, especially upon political subjects, there is no violence however great, there is no outrage however wild, they may not be led to commit. He, therefore, that is the author and instrument of sedition, in whatever way it is applied, ought rightly and properly to be considered as the author, and the committer of all those crimes, that sedition naturally begets; and he that attempts to commit it is guilty of an offence of that atrocious nature which every civilized state in Europe, in the world, must and does punish with the utmost severity.

Gentlemen, it will be in the recollection of all of you, that much about this period last year, there were in almost every corner of the kingdom, the most dangerous symptoms of a seditious spirit, which manifested itself in a variety of shapes. In the other part of the united kingdom, it is well known that productions were sent forth to taint the minds of the people, filled with every argument that falsehood, perfidy, and treason could hatch, to excite and stimulate the minds of the people to outrage and violence. One of these productions, with a purpose but too plain, was levelled against the private characters of the most respectable persons in the state, without excepting the supreme magistrate himself, loading them with abuse. And, in this part of the kingdom the same spirit showed itself, not only by associations under pretence of reform, that insidious catch-word in the mouths of those, who, when their public or private characters are considered, have the least title to use them, but by seditious and tumultuous meetings, which levelled their efforts against personal safety and endangered even the life of one, whom this country does and will long acknowledge as its greatest benefactor. Those disturbances which certainly did create a very serious alarm in the minds of every peaceable and well disposed subject, created a dread, that similar disasters might take place here, which have taken place in another kingdom, and that the system of government would be here followed, which has taken place in that kingdom, and which is certainly a most unexampled scene of wretchedness and misery. I say the insurrections which created those alarms were, by the timely assistance of the body of the state, fortunately got under, at least so far, that those who had been so industrious in their patriotic pretences, were much less industrious in their seditious attempts; for whatever colour they might give to their proceedings, they unquestionably had that scope and tendency; and the better and more respectable part of the community concurred to put down that spirit; which was so strong, so unequivocal, and effectual a display of the general sense of the nation, that it was not to be expected that any man, in whatever situation he was placed, would be so wicked, and so madly foolish, as to attempt afterwards to excite that spirit. The wisdom of the nation saved the country then. The voice of the people was heard. After so general a display of the sense of the nation, it was not to be supposed that any man would be so mad as again to renew such attempts. If I am not, however, much mistaken, the evidence you have heard this day does evince, that there were some persons, and those not in a very obscure situation in life, who were actuated by that wickedness, and by that madness of folly.

Gentlemen, what the panel at the bar formerly was, or what his conduct may have

been antecedent to his writing and circulating the paper which is the subject of the trial, I do not wish to enter upon farther than to observe, that if you may judge from the association to which he belonged, and which, whatever name it may have borne, and the name itself is an ominous name, the association of the Friends of Liberty, must impress you with no very favourable opinion of his intentions. I say, if you judge from the company he kept, you will not suppose, that his conduct, antecedent to this publication, was any other than is clearly evinced by the proof in this day's trial. Nor will it turn out to be a circumstance in his favour that he is by profession a *clergyman*; but a clergyman of that description whose principles are as hostile to the religion of his country, as to the established government of it; he does not however stand at your bar for his religious principles.

Gentlemen, when that is the nature of the offence charged against this panel, when you take along with you also the effects which this same spirit may have had upon the minds of the people, and when you take also along with you that that spirit, which once manifested itself in this country among a certain class of people, though got under, is not altogether put down, and that the verdict which you may this day pronounce, whatever it may be, will not pass unnoticed in any corner of the kingdom, I am sure you will give to this evidence that attention which it so justly merits, and will judge of it under this impression, that you are discharging a most necessary and important duty—to the public at large—to the constitution of this country—to that constitution under which you and your fathers have long lived happy and secure, that constitution, and that fabric of government, which has withstood many a tempestuous day, and many a political convulsion, and which it ought to be the prayer of every good subject, that it may long continue, and that you yourselves may long enjoy that government, with the same security and the same protection.

Gentlemen, the charge which is contained in this indictment may be said to be threefold; first, that of being the author and the composer of the paper, stated in this indictment to be seditious; and there is also charged against this panel, the printing, or causing it to be printed; and thirdly the circulating, or causing it to be circulated.—And, gentlemen, in judging how far the evidence brought upon the part of the prosecutor establishes all and each of these different offences, the first preliminary thing which falls for you to consider is, whether or not the paper, which is the *corpus delecti* in this case, which is the very foundation of the trial, is or not of the description stated in this indictment? You have heard it laid down by the honourable judges, who stated their opinions upon the relevancy of the indictment, that you ought to consider, not only the mere fact of circulating, but whether or not the paper said to be circulated, is or not of a seditious tendency—that is your province, as much as it is to judge of the mere act of circulating. Indeed before a jury can judge of the guilt or innocence of a party, charged with an offence of this kind, they must take into their consideration the nature of the paper itself; and, if you are satisfied that this paper is not seditious, there is no occasion for you to inquire whether the printing is proved, or the circulating is proved; because if the paper is innocent, no act of the panel with regard to it can be considered as criminal. You Gentlemen then are to consider, whether this paper is or not of that description. In the former part of this trial, you had occasion to hear a very long argument indeed, with respect to this preliminary point, whether this paper is or is not seditious; and there were some things thrown out which were obviated by the counsel on the same side which I have the honour to take, which I must also take some notice of. In the first place, it has been now, as on all similar occasions, advanced as an argument, and a very popular argument it is, that the liberty of the press may be affected by the issue of such a trial,—a liberty which is the birthright of every British subject, and without which government could not exist. Gentlemen, after what you have heard on this head, there is little occasion for me to enlarge upon it; very few words will be sufficient to show you, that the liberty of the press has no more connection with the question that is the subject of this trial, than your personal liberties at this moment have with it; for, gentlemen, to say that the liberty of the press is to be affected by a trial of this kind, by the prosecution of a person charged with publishing an inflammatory and seditious libel, is as absurd as to say, that the liberty of the subject, or the British constitution is to be affected by the trial of a highwayman, or a robber. The trial and conviction of these persons are absolutely necessary for the preservation of both the one and the other; for as in the one case we may safely say there could be no personal freedom whatever, if robbery were to pass unpunished, so in the other case there would be no *real* liberty of the press, if sedition is permitted to pass unpunished. Therefore I am sure you will be satisfied that the liberty of the press can have no earthly connexion with the case before you; for if you are satisfied that this is an inflammatory paper, the liberty of the press, instead of being injured by a prosecution of this kind, is confirmed and strengthened by it.

Gentlemen, with respect to what was stated at so great length by the counsel for the panel, —I say, with respect to the different quotations that he made from several speeches that were said to have been delivered in the Houses of Parliament, and the various quotations

from authors upon the constitution of this country, and which were said to be as seditious as the paper now before you, I apprehend the argument founded upon them is not more applicable than the argument with respect to the liberty of the press. Yet admitting that the extracts from those speeches are genuine, admitting that the authorities from which they were taken are genuine (by the way you will remember, that many of them were read from the Edinburgh Gazetteer and the Morning Chronicle), if these could be held by you as legal evidence that such speeches were delivered, yet that has no earthly connexion with the question before you. For, though there is such a thing as freedom of speech, in parliament, which is a privilege belonging to every member, those speeches, if made among the people, might have a very different tendency from what they have on the persons to whom the members of the House of Commons address themselves; such language in parliament is addressed to men who have knowledge to weigh, and judgment to resist the false impressions which such speeches are calculated to make; but addressed to the lower classes of the people, the ignorant and the illiterate, such language becomes dangerous indeed. But, gentlemen, it is certainly unnecessary for me to take up more of your time with respect to the preliminary arguments, stated by the counsel for the panel, which were fully and clearly answered by the learned counsel, and by the honourable judges who spoke after him.

Gentlemen, you are to consider, whether this paper is truly or falsely described, in the libel, to be of a seditious and inflammatory tendency; and I am sure, it is almost impossible for any person to peruse that paper without being completely sensible, that the person who was the author of it, and who circulated it, did it for the most wicked and the most seditious purposes. The whole paper, from beginning to end, breathes the language of sedition, and of opposition to the established government; it is written in a style which marks the school from whence it came; it is violent, hyperbolical, and declamatory; it calls upon the people to rise up and vindicate their just rights; it speaks of a just and necessary war, as being undertaken "by a wicked ministry, to forge chains for a free people, and to rivet those chains upon ourselves."—Gentlemen, when a paper of this kind is addressed to the lower classes of the people who are ignorant of the nature and principles of government, I say, when a paper of this tendency is addressed to such people, what effect must it have upon their minds? Will it not lead them to acts of violence, to do every thing in their power to destroy the established constitution of this country? And must you not be satisfied, that the person who composed it, and sent it into the world, had seditious intentions?—Gentlemen, it is not necessary for me to read over the particular parts of this seditious paper; almost every part of it breathes the language of sedition. The first two paragraphs say, "That portion of liberty you once enjoyed," &c. [See the Indictment.]

Gentlemen, what is this, but making the common people of this country believe, that they are not only oppressed, but absolutely slaves; and if they once have this belief, can you believe that they will not endeavour to exert themselves, as much as possible, to destroy that government under which they live as oppressed slaves? and can you believe, that a person sending such papers among them, did not intend to excite them to acts of outrage? It is unnecessary for me to read any more of the paper which is the ground-work of this trial,—I leave it entirely to your consideration, gentlemen, whether this hand-bill may not only be considered seditious in itself, but written for seditious purposes; and I am perfectly satisfied you will be unanimous, that this paper does contain matter of a seditious tendency, and indeed, supposing the words of this paper had been very different to what they are, supposing the intentions of the author and circulator had been different to what they are, the manner in which it was circulated and sent abroad, must satisfy you, that there was some such wicked intention on the part of the person who sent it abroad. If this man had considered, that this paper contained nothing of a seditious and inflammatory nature, can you believe he would have circulated it in the way he did—going to two booksellers, and getting it printed in the clandestine way in which he did get it printed? if this was not his intention, he certainly would have published it in a very different manner; but the proof of this man's intention does not rest upon the way in which he circulated it, because the paper itself shows, from the whole tenor of it, that the person who wrote it did mean to create a spirit of disaffection to the established government. Why then, gentlemen, it is for you to consider, whether this man's being the author of this paper, and whether his printing, or causing to print, and circulate this paper, is or not established by the evidence; and, gentlemen, the proof in this case appears to to me to be so very clear, and so conclusive, that I should think it very unnecessary to take up much of your time in recapitulating the substance of that evidence. I take it to be most clearly established in proof, that this panel is the author of the paper contained in the indictment;—and the evidence upon that head, to which I shall call your attention, is that of Mealmaker.

Gentlemen, George Mealmaker depones, that there were two societies in Dundee, one of the Friends of the Constitution, the other of the Friends of Liberty, of which last he is a member. He tells you, that he remembers, in July, an Address to the Friends of Liberty, that Mr. Palmer, being invited with some

others to the meeting, he read the address; that there was sometime after a general extraordinary meeting, to consider the business of the society and the situation of the country; that it was proposed at the committee, that it should be read at the general meeting; that he read the address, and that alterations were proposed and agreed to; that it was ordered to be printed; and, so far as he recollects, it was delivered either to Mr. Palmer, or Mr. Ellis, or both of them: but that part of his evidence, establishes in as clear a manner as can be, that this panel was, in law, as well as in fact, the proper author of this paper; he says, that part of the address only was produced at the committee, that at the general extraordinary meeting, it was produced more full;—and, gentlemen, he goes on, and says, that the additions were in the hand-writing of Mr. Palmer; he says that the society unanimously gave orders to Mr. Palmer or Ellis, to get it printed; and, that they accepted the offer of the society; that it was printed, and the society paid the expense of it; he saw an order given by the society for the payment of it; that he heard it had been printed in Edinburgh; and that he heard that leaves were torn out of the book. So that you see it is established, by the evidence of Mealmaker, that although the whole of it was not written by Mr. Palmer, yet that it was left in Mr. Palmer's hands, and afterwards when produced in the general extraordinary meeting, the several additions and alterations were in the hand-writing of Mr. Palmer.

Gentlemen, I do beg leave to submit to you, that this must, of itself, show that Mr. Palmer is, in the eye of the law, and must be held and considered in the eye of the law, as the author of this paper. And I must beg leave to observe, that it is by no means a probable story which Mealmaker has told, and some others have concurred with him in saying, that he was the author of what he called the first part of it, if you look at the style of writing, — look at his subscription, that is clearly the style of a man of no education, and the style of the paper is that of a man having had a liberal education; and I cannot but believe that Mr. Palmer is the author of the first part of this paper; but it is not in evidence, how much of this paper was the production, that was laid before the committee at the first meeting. That Mealmaker wrote part of it, and perhaps a great part, I am not disposed to deny, but the panel taking it under his charge so long, and altering the composition we know not how far, must be held as the writer. It is true, we have heard that he laboured in the general meeting to soften the expressions of this paper; but what does this amount to? only a demonstration of the criminality of his intentions. These deluded ignorant people knew not their danger; the panel did, therefore, to avoid the consequences which he knew might follow (not that he in other respects disapproved the strength of language), labour to soften the expressions. Now, this part of Mealmaker's evidence is confirmed by the evidence of Ellis, who depones, that Mr. Palmer said, that he did not think there was any thing exceptionable in the paper; that he held it to be as true as the gospel, and, in his opinion, innocent, but that he was afraid people in power would take notice of it. Now, when you see that Mr. Palmer softened the expressions, this is one of the strongest circumstances, which must convince you of what Mr. Palmer's intention was here. Mr. Palmer was certainly the best informed person in that meeting; he knew that if he was to insert expressions palpably seditious, he could easily be brought to punishment; but he softens the expressions, and shows, that he did not intend to be brought into trouble for this paper, but that it should come forth in the shape in which you now have it.

Gentlemen, taking therefore the whole of the evidence which you have just now heard, I am confident you will be of opinion, that the first part of the indictment is proved, that Mr. Palmer was the author of this seditious paper; but whether he was or not, you surely can entertain no doubt as to his being the person who caused it to be printed at Edinburgh; and, to this end, I would call your attention to the evidence of Morrin; he says, he got one thousand copies from his brother, who printed them; that Mr. Palmer ordered them to be printed; that he had a letter from Mr. Palmer ordering them to be printed; and when you consider the import of that proof, you will be clearly of opinion, from the comparison of the hand-writing, that all these letters said to be written by Mr. Palmer are the same hand-writing.

Gentlemen, I own I find myself so much fatigued, and so unwell from the heat that is now in this room, that I am hardly able to go through the whole of the evidence; fortunately this part of the evidence at least, needs not my assistance. The last charge in the indictment is, the circulation of this paper, which is, as to the evidence, the most clear and conclusive. You have the two booksellers of Dundee; both of whom expressly tell you, that Mr. Palmer called at their shops, and left them several copies of this paper, that they afterwards burnt them; and their evidence is confirmed by the evidence of Smiton, who received a letter from Mr. Palmer, mentioning, that he had sent a number of copies of this paper; and, he says, that he gave them to a Mr. Harwood, a Mr. Fisher, and some other persons; so that the charge of circulating this seditious paper is clearly established beyond a doubt by the proof before you.

Gentlemen, I will not take up any more of your time, for I feel myself so very much exhausted, that I am not able to go on. I leave the case with you, confident that you will be

satisfied in your minds, that each of the articles in this indictment is substantiated by proof; and whether you shall be of opinion that Mr. Palmer wrote every line of this paper or not, that the other parts of this indictment are proven, namely, that he caused the paper to be printed, and when printed, did distribute, and did circulate it. With these observations, I leave the cause in your hands, gentlemen of the jury, and have no manner of doubt, you will bring in such a verdict as will exonerate yourselves, and serve your country.

Mr. *John Clerk.**—Gentlemen of the Jury; It is now my duty to address you in behalf of the panel. That you *mean* to try his cause fairly and impartially I have no doubt; and yet as a preliminary to my remarks, I must take the liberty (without offence I hope) to guard you against certain prepossessions, which often lead to the greatest injustice in cases like the present. Unhappily the times are so violently disturbed by political animosities that the opposite parties, not contented with disputing about their public principles,—a contention that may subsist without personal differences,—seem now to exhibit in many instances a degree of mutual hatred and rancour, which could hardly be exceeded, if there was a civil war in the kingdom. The friendship and cordiality, that very lately subsisted among us, has been so much affected by these political squabbles, that friends and relations have separated with mutual disgust. The clamour of party spirit resounds in every quarter. Nobody escapes the fury of the times. If one is a whig, he is distrusted and avoided by the tories; if he is a democrat or a reformer, he is execrated. On the other hand a tory is exposed to the hatred of the opposite factions. The common charities of life are lost in the whirlwind of political phrenzy, which now agitates the minds of men. Happy they, who in the midst of such a ferment, can look on calmly and dispassionately, and form candid and moderate judgments, as to the conduct of their fellow-citizens.

Gentlemen, though I am not personally acquainted with any of you, I am satisfied that I now address a sensible, an enlightened, a well informed jury. Whether you have mixed in the political disputes, to which I have alluded, I do not know. Should you disapprove of schemes of reform in parliament, or innovation of any kind, I hope your disapprobation is not of that violent sort, which is now so common. But whatever your sentiments upon these subjects may be, I earnestly intreat you to remove from your minds the prejudices, which at present more or less affect the minds of most men. If you think the panel's opinions are unsound or dangerous, reflect, that he may still be an innocent and a worthy man. If he has said or published any thing that does not agree with your own sentiments, recollect that in this land of liberty men are free to speak their minds, and even to print their opinions and views of public affairs, though they may be such as it would be inexpedient, and even dangerous to follow.

Gentlemen, Mr. Palmer has been indicted for the publication of a writing alleged to be seditious. It certainly shows abundance of that party zeal, of which there have been so many examples. But though the language is not to be commended for its moderation, it is another question whether such terms are seditious, and punishable as a state crime. The language of party is intemperate, abusive, too often slanderous,—without candour, charity, or decency,—disgusting to all lovers of quiet and moderation. Asperity is naturally incident to controversies of all kinds, and it is eminently so to the party disputes of our country, in the course of which disputants, availing themselves of our free constitution, indulge without restraint in venting their anger and indignation. The abominable malignity of our religious contentions during the progress of the reformation, and afterwards, is not yet forgotten. The virulence of party rage in the reigns of the Stuarts abated in the following reigns; but we have generally had enough of heats and dissentions ready, and as it were in a state of preparation for breaking out in violent animosities.

Gentlemen, some of you may remember the political disputes in the beginning of the present reign. No colours were thought by the disputants to be too black for representing the character and conduct of political adversaries. At last a new topic of discontent was introduced or rather revived, I mean the subject of reform in the government, into which as it was alleged a number of corruptions had gradually made their way. A long and disastrous war with America had terminated disgracefully to Britain, leaving behind it an immense addition to the public debt. The misfortunes of the American contest were ascribed to disorders in the administration, and reform was loudly called for as the proper remedy for these abuses. On the other hand the abuses were denied, and the reform opposed. The bitterness of these disputes is far from being exceeded in the hand bill now called a seditious libel. In this way the temperate language of reason and moderation was given up for the more animated effusion of party zeal. The taste of the public, or of those who were interested in such discussions, again sought the excitements of violent and inflammatory declamation. Any other way of treating political arguments would have been held as insufferably tame, tasteless, and insipid, and would have been utterly disregarded as lukewarm and contemptible. I may refer you to

* By the assistance of Mr. Clerk I have been enabled to correct numerous errors which had crept into the reports of this speech in the printed accounts of Palmer's trial.

the letters of Junius as a well known sample of political argument, exceeding in elegance, but not much if at all, in acrimony, many of the cotemporary publications. The petitions to parliament itself, not to speak of other documents, and the common publications relative to reform, for a number of years past, may be generally referred to, as evidence of the heat and violence of the reformers and their adversaries.

Gentlemen, I need hardly mention that those plans of reform concerning which the public mind has been so much agitated, were first suggested in consequence of certain opinions, as to the influence of the Crown, and the employment of that influence. It was thought by persons of the highest consideration in the state, and openly asserted even in parliament, that the influence of the Crown had increased to a degree, and had been used in a manner highly dangerous to the liberties of the people. The same assertions were made at public meetings, and eagerly listened to by all those who wished for a parliamentary reform as a remedy for grievances. It was observed that the American war, though it was popular at first, became very much the reverse. And yet the minister, through the influence of the Crown, found means to continue that contest even after it was universally detested for its injustice and impolicy.—The influence of the Crown enabled him to keep his majorities in parliament, who totally disregarded the voice of the people. It was observed that the representation of the people in parliament was unequal: that individuals, a number of whom were peers, had the nomination to seats in the House of Commons, by which nominations the people were in no way represented. That a very few persons could by these nominations command a majority of the House of Commons, and a majority of that kind necessarily fell under the influence of the Crown, so that the constitutional right of the people to a voice in the legislature by their representatives, was nearly lost, if not entirely abolished. It was said that a state of things so dangerous to the liberties of the people, urgently required reform. Accordingly plans for a more equal representation were proposed in parliament, but they were defeated by parliamentary majorities. Still, however, the proposers of reform continued their exertions, and endeavoured to influence the public mind by publications of different sorts, in hopes of carrying through their favourite measure by its popularity. I need hardly observe, gentlemen, that these plans of reform in parliament were supported with great zeal by his grace the duke of Richmond, and by Mr. Pitt, as well as by many other men of importance. Mr. Pitt continued his support of parliamentary reform, even after he was minister, and wielded the influence of the Crown with that assistance of borough nomination, which he had so strongly reprobated. Even Mr. Dundas* himself, did at last upon one occasion, make a speech for reform, when he was secretary of state.

Gentlemen, at this period, though the plan of reform was keenly opposed as well as supported, and the contest of interests and opinions upon a subject so important necessarily produced a good deal of that warmth that is attendant upon party or political disputes, nobody had yet heard of the furious charge of sedition being made, either on the one side or the other. The language employed by the promoters of reform was pointed, zealous, acrimonious, imputing corruption in plain terms, to the system of which they demanded a reform;—but it was the language of controversy, not the language of sedition. It was the language of freemen, who had a right to complain of their grievances for the purpose of having them redressed. It was the language of discontent, and it had a tendency to spread the discontent. But still it was not seditious, nor in any other respect illegal. He who speaks or writes to raise discontent or disturbance, or to bring the government into hatred or contempt, is seditious; and he whose speeches or writings have that tendency is seditious, unless in either case the speaker or writer has a legal object in view. But *non injuriam facit qui jure suo utitur.* Men may have a right to complain, and to complain loudly, though their complaints should be discreditable to government. If they *bonâ fide* seek reform, or any thing else relating to their rights, whether public or private, they do no wrong, though their exertions in the defence of those rights which they still possess, or the recovery of those of which they have been unjustly deprived for a time, should raise discontents or disturbances. In every case of this kind, the question of right is first to be disposed of. Gentlemen, so it was thought for a long course of time, and in relation to many examples of all sorts, in which individuals or men in collective bodies loudly set forth the gross abuses that had taken place in administration and representation. I apprehend that the proposers of reform were not mistaken in law, as to the legality of their proceeding. I apprehend that the law is now, as it was then. Mr. Pitt and the duke of Richmond were guilty of no sedition, and the same law that applied to their case does now protect Mr. Palmer. Gentlemen, there is no change in the law, but there has been a very considerable change in the views of the disapprovers of reform. I do not merely allude to the opinion which is now much stronger and more prevalent than it was formerly against reform, but to the increase of violence and hostility against the reformers. Gentlemen, I have already cau-

* Afterwards lord viscount Melville. See in this Collection, *post*, his trial before the House of Lords on an impeachment by the House of Commons, A. D. 1806.

tioned you against the prejudices which may arise from such sentiments. Justice is due to every man, even to a reformer. But I must notice the cause of the increased rancour of our dissentions. It is closely connected with the view that ought to be taken of the present case by all men of sense and probity.

Gentlemen, before the French revolution, the argument was all on the side of the reformers; and so much was this the case, that the most sensible men I know declared themselves to be convinced, that a moderate reform in the House of Commons would be of the most essential service to the community, by strengthening the constitution. But the French revolution took place,—an event unparalleled in the history of human affairs,—and a mighty monarchy, apparently secure and unassailable in its establishments, was suddenly overturned by its own corruption. At the first news of this great change, it was supposed to be a sort of reform in France, introducing a representation of the people, but with a continuance of the nobility, and all the glory and splendour of the monarchy. Every benevolent and liberal mind in this country rejoiced, that the French had recovered their liberties. But new events took place. Gentlemen, the glory of the revolution was done away, and anarchy and confusion succeeded. But many people in this country, who had at first applauded the revolution, still continued to think — notwithstanding those unfortunate circumstances — that the French revolution would be of advantage to France itself, and to the rest of the world. Gentlemen, the people who applauded the French revolution did not suddenly change these opinions, but their numbers lessened by degrees; and on the other hand the proceedings in France at an early period of the revolution had been so atrocious, that a violent party in this country arose, decided enemies to every species of reform. Thus a new flame was kindled here, and the most furious debates took place in parliament upon the question of reform. And, gentlemen, those discontents, and the virulence of parties was aggravated by the separation and the quarrels of men who had formerly entertained a warm friendship for each other, and had cordially acted together in public affairs.

Gentlemen, at this unfortunate time, when parties were running so high, popular writers in this country applied the doctrines circulated for the most insidious purposes in France, to the state of our affairs, and assailed the vulgar mind with arguments too well suited to the vulgar in all ages, though wicked and highly dangerous in their nature. They were answered by writers on the other side, with the virulence of invective; and matters ran so high, that men of opposite opinions could scarcely speak to one another, or communicate their sentiments on political subjects. I really believe that, if you go back in the history of this country to the most violent times ever known, such animosities did not exist.—You have heard to day from my friend Mr. Burnett, that the existence of government itself has been threatened by the reformers. On the other hand, you are no strangers to the hand-bills and pamphlets, that are circulated by the latter, treating the doctrines advanced by Mr. Burnett, as the doctrines of despotism and tyranny.—In short the two parties have exhausted against each other every topic of abuse.

Now, gentlemen, while matters were in this situation, and parties ran so high as they did, the king's proclamation was published, stigmatizing certain publications in vindication of the French doctrines, and the other new doctrines which have been grafted upon them. Gentlemen, the proclamation mentioned no book in particular; but it was well known that it alluded to Paine's book.—Such was the liberty of the press, or the licence of the press, that the book was universally circulated through the kingdom, and recommended, nobody supposing it to be a libel, that is, an unlawful writing. Nobody supposed, though it contained doctrines in themselves dangerous, that either the author, or the printer, or the publisher of such a book, had been guilty of any crime; and so little did the people suspect it to be of that nature, that different societies advertised in every newspaper recommending the writings of Paine; and they were at pains to have cheap editions printed and circulated among the lowest of the people. I believe no book ever had such a rapid circulation; and yet even the lawyers were not aware that this book was a libel, till the opinion was at last announced to them, upon authority, entitled to great respect indeed, though not properly speaking a legal and binding authority.

In the mean time it was supposed that the populace were infected with dangerous opinions, in consequence of the different popular works that had been distributed among them. And this happened at the same time that the French had been successful in driving their enemies out of France, and even in over-running a great part of the Low Countries. A sudden alarm was spread among the higher classes, and many were afraid that their property was in danger from the pernicious influence of the doctrines that had been circulated among the people—the foolish and extravagant doctrine of Paine concerning the Rights of Man.—Now, gentlemen, I need not state how much that alarm must necessarily have increased the violence of party prejudices; nor need I state to you that those gentlemen, who still thought that a reform in parliament was necessary to keep down the increasing influence of the Crown, were unfairly confounded with those who entertained the pernicious French doctrines; and it was not very difficult to represent them as men of the same principles, because every person

who entertained the French principles, was necessarily a reformer; though it did not follow that every person who was a reformer approved of those dangerous doctrines.

Gentlemen, many detest the cause of reform; many consider it as most dangerous to the country; many even consider that it is absolutely necessary to stifle every mention of reform. But, gentlemen, that is a mere opinion upon the expediency of reform; for, however pernicious the doctrines of Paine may be, however pernicious doctrines may be that are directly hostile to the constitution, that have a direct tendency to overturn the government altogether, however illegal to entertain a serious design of introducing such a reform as, that monarchy should be abolished, that the House of Lords should be abolished, and democracy set up, however illegal such a design may be, I have never heard from any tolerable authority, that the cause of reform, a fair, free, and equal representation in parliament, even when prosecuted by the meanest of the people, is an illegal object to pursue. Various gentlemen have proposed their plans of reform; the present chancellor of the exchequer, the prime minister of Great Britain, has several times made motions in the House of Commons for reform in parliament: it is well known that the duke of Richmond did the same thing. It is well known that Mr. Flood, who died lately, likewise introduced a plan of reform: and when these plans of reform, however pernicious, were brought forward, it was never thought illegal to pursue such an object. What is more—a reform in the county representation of Scotland is at present in agitation; and even the public prosecutor himself, the lord advocate (and I am happy in the opportunity to express that esteem for him, which every body who knows him must feel), has appeared as a delegate in Edinburgh in the cause of that reform. Nay more—is it not well known to every body, that a reform is at this moment a subject before the House of Commons,—a reform in the royal boroughs of Scotland?—A respectable committee of the House of Commons has been appointed, and is to report, upon the subject of reform among these boroughs. It is vain therefore to pretend, that the cause of reform, however pernicious or inexpedient it may be, is illegal. If the prisoner at the bar is a reformer, his ideas may be exceedingly pernicious and dangerous in their tendency; but if they be legal and constitutional in themselves, however inexpedient they may be, other men, who differ with him in opinion, have no right to impute to him views or intentions of a criminal nature.

It has been pretended that nobody should interfere in such affairs, but men who from their rank, their property, talents, or other circumstances, have acquired some importance in the country, and that the vulgar, or the lower ranks in society, have no title to discuss such subjects, or to associate themselves for the purpose of obtaining a parliamentary reform. Gentlemen, I was glad to observe, that no such idea was started by the public prosecutor; and I am sure you would not have listened to it. The law of this country knows no such distinction of persons. No man is better entitled than another to consider what is good or beneficial to the state, or to petition parliament for a redress of grievances. The beggar in rags has a right to give his opinion upon the most important of our affairs; and if a set of men who had no other means of livelihood than that of begging from door to door, were to form themselves into a society, for the purpose of obtaining a parliamentary reform, or for the redress of any other grievance, such association would be as legal as if it were composed of the higher classes.

A passage from a celebrated writer was read to-day concerning the liberty of the press. It is also an authority as to the privilege of the subject to canvass the measures of government. It shows that the subject is entitled to petition parliament, or any branch of the legislature, for a redress of grievances. Now, where is the law pointing out a distinction between man and man in this particular? There is no prohibition; and De Lolme, who is now established as a great constitutional authority, who has not one single sentence in his book which may not be regarded as constitutional law, states to you, That there is a difference between our government and all others in this respect, that the privilege and liberty of *the subject* is *here* in the same situation with the *government* in other states, to this effect, unless the liberty of the subject be restrained by positive laws, it is understood to be the law and the constitution of this country, that his privilege, as a british-born subject is, to do whatever he pleases; and it is incumbent upon the person, who pretends that it is not lawful for him to do this or that, to produce some law prohibiting him from doing it.* And, therefore, I must now, from what I have said, state to you, that, however inconvenient it may be, in the circumstances of this country, that small and insignificant societies should be gathering in every village for the purpose of reform, you are only to consider whether they, in doing so, are guilty of a breach of any known law. I shall say no more upon that subject. I consider it as a very clear and indisputable point, that they are entitled, how mean soever they be, to pursue that object.

Gentlemen, the panel did connect himself with a very insignificant society in the town of Dundee. The object of the society was, to promote a parliamentary reform, by legal and

* See De Lolme on the English Constitution. Book 2. c. xvii. p. 446, 447. ed. of 1816.

constitutional means. Gentlemen, you know well, the difference between such a plan, and a project formed on the new and dangerous doctrines. But certainly there is no evidence that the society with which my client connected himself entertained any ideas hostile to the constitution. On the contrary, it is proved that they, on a former occasion, laid a dutiful petition before parliament, praying for the reform they wished for, a reform of the same nature that had been sought by so many excellent men in this country.

And, gentlemen, on the other hand, it has not been proved, that the prisoner has embraced any of the new and dangerous doctrines; his only object was the same reform in parliament, which has been approved of by so many, and has been stigmatised by none as illegal; and there is the best negative evidence, that no idea hostile to the constitution was entertained by any one member of that society. Their debates, their designs and acts went no farther than to the same legal reform; and however inexpedient you may think it, you must never forget that the object was not illegal.

And, gentlemen, I must here take the liberty to give you another caution. Gentlemen, you must judge of this cause, "secundum allegata et probata," that is, upon the libel and the evidence laid before the Court. I know nothing of this cause, but what I have been able to learn from the prosecutor's allegation, and the evidence upon it. I cannot go beyond them in my endeavour to vindicate the prisoner; nor are you, gentlemen, at liberty to do so. You may be well acquainted with this part of the country; and you may know or *suspect* that some of the people, associated with the prisoner, had embraced the doctrines of Paine. If that had been proved, it might have affected the prisoner, though very little if he is not a convert to the same doctrines. But, gentlemen, nothing of this is proved either against the prisoner or his fellows in the society, and you must lay your *private knowledge*, or suspicion, if you have any, entirely out of consideration.

Gentlemen, having said so much as to the legal and constitutional object of the society, the next consideration is, with regard to the measures that were pursued for its attainment. For though an end is lawful, it will not justify unlawful means. But, gentlemen, the means *were* lawful, and in particular, the hand-bill for which the prisoner is indicted, contains no statement that is not warranted by law. It contains some free remarks upon the measures of government, but the subjects of Great Britain have a right to discuss all the measures of government.—It is a printed paper, but the free subjects of this country are entitled to discuss the measures of government by means of the press: And, gentlemen, notwithstanding the just praises universally bestowed upon the British constitution, it has hardly ever been doubted that even this great and glorious establishment, excellent as it may appear in its contrivance, would be totally inadequate for the purposes of a free government, or for the maintenance of civil liberty, or for the comfort of society at all, were it not for THE LIBERTY OF THE PRESS. De Lolme, in the passage read to you, says so expressly. The same principle is laid down in the writings of Hume, the great philosopher and historian, whose authority, which is otherwise of the greatest weight, is much greater on this point, from the general tenor and tendency of his political doctrines. He was no advocate for reformations; on the contrary, he was a Tory writer, who preferred the monarchical part of the constitution; and the whole of his arguments have a leaning to that side. He tells us expressly, after showing the advantages of public freedom, provided it is duly controlled and prevented from running into disorders, that "These principles account for the great liberty of the press in these kingdoms, beyond what is indulged in any other government. It is apprehended, that arbitrary power would steal in upon us, were we not careful to prevent its progress, and were there not an easy method of conveying the alarm from one end of the kingdom to the other."* Here the author presupposes that the people have a right, by means of the liberty of the press, to print against any measure of government of a dangerous tendency, and convey their sentiments from one end of the kingdom to the other; and he declares his opinion, that the excellent structure of our government in other respects, with all the provisions of law, would be totally inadequate, without some such engine as this, to keep the people continually in a state of alarm about their liberties. 'The spirit of the people must frequently be roused, in order to curb the ambition of the court; and the dread of rousing this spirit must be employed to prevent that ambition.' These are striking passages, and one would think that, if Hume had anticipated such a trial as this, and had intended to give his opinion upon it, he could not have used expressions more directly applicable to the case.—"The spirit of the people must frequently be roused, in order to curb the ambition of the court; and the dread of rousing this spirit must be employed to prevent that ambition. Nothing is so effectual to this purpose as the liberty of the press, by which all the learning, wit, and genius of the nation, may be employed on the side of freedom, and every one be animated to its defence. As long, therefore, as the republican part of our government can maintain itself against the monarchical, it will naturally be careful to keep the press open, as of importance to its own preservation."—And here, gentlemen, you should be very careful to distinguish be-

* On the Liberty of the Press, Essays, vol. 1, p. 12, 8vo. 1800.

tween public censure circulated by means of the press against the measures of government, and private censure or scandal.

Private slander, while it has a tendency to raise heats and animosities, and even personal violence between man and man, is not recommended by utility of any sort, and certainly it is of no use as a means of preserving the public liberty, and therefore it is punishable as an injury to the party who is slandered. It is illegal because it is injurious. The slanderer has no *right* to defame his neighbour. But where men have a right to express their sentiments, and only use that right, they are not punishable, though others may suffer by the use which they make of their right. The most grievous censure is that which is justly inflicted, the censurer having a right to censure. You must therefore distinguish between a censure of certain public measures, and a defamatory libel against the private character even of that individual, who is responsible as a public minister for the same public measures. A libel against the minister, Mr. Pitt, as an individual, in his private character, is actionable; but a censure of the measures of Mr. Pitt as a minister, is not actionable; and the reason is, that the free subjects of this country are entitled to discuss the measures of government, with praise or blame, according to the opinions they have formed of those measures; and this right of discussion may be used either by words, writing, or printing —and especially by the press, because without the liberty of the press, the liberty of the subject could not possibly be maintained.

But if this be granted, and it seems indisputable, it necessarily follows that in discussions on public affairs, whether by words, writing, or the press, false or disputable statements may be made without criminality. For if false or disputable statements upon the measures of government were punishable by government itself, or by the courts of law, it is plain that the people would soon lose the right to say what is true. Even falsehood is not without its use in discussions on public affairs, as it gives an opportunity to set the matter in its true light, and fix the public opinion upon just grounds. But if contests of this nature are to be adjusted by indictments for sedition and sentences of transportation, for opinions against the conduct of men in power, nobody will venture a public statement against the most wicked and corrupt ministers, or the most unwarrantable measures, lest the jury on his trial should differ in opinion with him. It is evident that unless men were allowed the free course of discussion in publishing their thoughts, whether well or ill founded, upon public affairs, the liberty of the press would be a mere name, and we should no longer have the smallest benefit from it.

And here I must object to the definition which you have heard of the liberty of the press. You have been told that it consists merely of freedom from restraint in publishing, that it is quite of the same nature with the liberty of speech, which cannot indeed be restrained in the first instance, because every man has it in his power to say what he pleases; but still every man is answerable for what he says—so it is said that we enjoy, on the same terms, the liberty of publishing what we please, but we must be answerable for what we print, and if it happens that we print a libel, or any criminal matter, we may be punished for it, just in the same way as we may be punished for speaking. But this idea of the liberty of the press, is very imperfect. Such a privilege as the prosecutor describes would be of no use—while it would operate as a snare to unwary persons, who in printing their sentiments would subject themselves to the persecution of a corrupt arbitrary government. The true liberty of the press appears from the enlightened works of Hume and De Lolme. It is the liberty of fair and free discussion without the danger of persecution.

Gentlemen, it is hardly necessary to give you instances of the liberty of the British press being so exercised. Such instances are to be found in every newspaper; and thousands of publications upon the measures of government published every year, afford examples of the freedom of discussion allowed by our laws upon all topics of public concern. Gentlemen, you were told, that many libels being circulated, and passing unpunished, afforded no argument, in a court of law, why the panel as the author of a libel should not be punished. But, gentlemen, do not you see that this is altogether a begging of the question? The question is, whether this which is called a libel is such or not? In other words, whether it is a seditious paper. Now it is clearly not libellous or seditious if the author had a right to discuss in such words the measures of government. I have argued in support of the right as being founded in utility, or rather in the necessities of the constitution as by law established—and what stronger argument can be adduced as to the sort of publication on public measures, that falls within the rule as to the privilege or liberty of the people than an argument founded on the undeniable usage in such publications? The fact that thousands of them have passed without notice and unprosecuted, is a proof of the law and the constitution of the country, that the people should have it in their power, to sound the alarm from one end of the kingdom to the other, upon every occasion when they think it necessary. But, gentlemen, if these publications are libels, as has been hinted, what must you think of the public justice of the country? The public prosecutor has allowed all these infamous libels to escape, during a course of so many years. Shall it be said, that all these libels have been winked at, that the public

prosecutor has neglected his duty, and betrayed his country in not prosecuting these libels, in order to wreak the whole of his vengeance at last upon Mr. Palmer?—The public prosecutor knows the liberty of the press better; it was not till party spirit had risen so high, that the prosecution of such writings was ever thought of.

Gentlemen, the liberty of the press is not to be used as an instrument of sedition; but still it would be most mischievous to prevent it from being used as a means of ascertaining, correcting, nursing the public opinion, as a salutary control over wicked or foolish ministers.

Gentlemen, there is no danger in that liberty of the press which I contend for. It may be fully enjoyed with the most perfect safety to the government. Our standing army, which is kept up even in time of peace, puts the government in complete safety against any supposable disorders, which can arise from the liberty of the press. That great establishment was itself long opposed as being highly dangerous to public liberty; but now that it is absolutely fixed, an attempt is made to take from the people their chief protection against its evils—the liberty of the press, without which no government can be subject to the control of public opinion.

Gentlemen, our ancestors made a long stand against the appointment of a standing army, but at last it was established; and it has gradually increased in numbers. It is fully sufficient, to curb any seditious spirit arising in the populace. In 1780,* when the populace of London were actuated by a sort of phrenzy, in which their object was the destruction of public and private property, did we not see that a few regiments brought up to the capital, quickly restored order, peace, and tranquillity? Such a standing army completely secures the peace of the country against any sedition that can arise among the people, and this perhaps is the principal use of a standing army. So it has been observed by Dr. Adam Smith, that while there is a standing army, the liberty of the press may be safely extended; for should the abuse of that liberty at any time produce tumult, the executive government of the country may be supported, and quietness secured by means of a standing army.

Now, gentlemen, if such is the true nature of the liberty of the press as an essential part of the British constitution, and absolutely necessary for the preservation of the public liberty; if it is legal to print and publish free statements upon the measures of government, in order to lead the public opinion, and direct it against administration, you will turn your attention to the language that has been employed in statements of that kind. Calm and moderate argumentation upon public affairs is free to every man; but we are told that violent, inflammatory, or seditious language is punishable. All this may be very good, but what does the prosecutor mean by it? What is seditious language? Is it sedition to write with animation or eloquence on a subject so deeply interesting? Gentlemen, if a writer on political subjects, accusing a minister of corruption, or folly, must assume the composure of a mathematician in his demonstrations, he may lay down his pen. His style must correspond with his subject. If he is not at liberty to use the language which is appropriated by usage to that subject, he has not truly and substantially the liberty of discussion. We must therefore appeal to the usage, which proves the style and manner that is allowed in political controversy.

Now, gentlemen, I hold in my hand, a pamphlet against the present minister, expressed in such terms, that it must have been the subject of prosecution, if it had been punishable by law—and yet no prosecution has followed on it. The hand bill now before you is mild and moderate, when compared with it. This, gentlemen, is a publication in the form of a letter to the right hon. William Pitt, upon the subject of his conduct with respect to a reform. It begins with accusing him of apostacy from that cause; and, having stated in general the subject of the pamphlet, it goes on thus—"The annals of ancient or modern apostacy contain nothing so flagrant. It was reserved for our days to add this variety to the various combinations of fraud and insolence, which have in former ages duped and oppressed mankind; and it was peculiarly reserved for a statesman, whose character reconciles the most repugnant extremes of political depravity, the pliancy of the most abject intrigue, with the vaunting of the most lofty hypocrisy:—It was reserved for him, not alone silently to abandon, not alone even publicly to abjure the doctrines of his former life; not alone to oppose, with ardour, with vehemence, with virulence, those propositions from others, by which he himself had earned unmerited popularity, and climbed to unexampled power; but by a refinement of insolent apostacy, to convert into a source of obloquy against other men, a measure which had been the basis of his own reputation and importance. It was reserved for such a man to repeat those very common-place objections to the measure, and those very common-place slanders against its movers which had been urged against himself, and which he himself had justly despised, or victoriously refuted. It was reserved for him, unblushingly to renew all the clamour against novelty, and all those affectionate alarms for the British constitution, which patriotic borough-mongers had so successfully employed against himself. Yes, Sir, it was

* See in this Collection Vol. 21, p. 485, the Proceedings against lord George Gordon, on an indictment charging him with high treason.

reserved for the son of Chatham thus to stigmatize the 'dying legacy' of his father, and thus to brand his own 'virgin effort.'

"You will have already perceived, that it is on your late conduct in the cause of parliamentary reform, that I am about to animadvert. Though I feel a dislike not unmixed with contempt for politics purely personal, and though I should be the last man to betray and degrade the great cause of reform, by mingling it with the petty squabbles of party, yet when I see the authority of an apostate character opposed with impudent absurdity, to the cause from which he apostatized, I think it at least fit that that obstacle should be removed, and that the vapouring language of such a delinquent should be counteracted by the merited brand of his crimes.

"The cause of reform demands that the nature of your present opposition to it, should be understood by the people. The interest of the people demands that they should well understand the character of him who may yet be likely, in some possible combination of events, to offer himself to them as the champion of reform, and perhaps ultimately to prove the leader in more extensive and dangerous measures. And it is generally fit that no signal example of triumphant apostacy should pass with impunity.

"These are the public reasons, Sir, which lead me to call public attention to your conduct; reasons which have influenced one who has no respect for your principles, and no exaggerated opinion of your abilities, which he has sometimes admired without idolatry, and often opposed without fear. That I am in no abject or devoted sense a partisan, I trust even my present sentiments will prove. I am only, therefore, your enemy so far as I believe you to be the enemy of my country; and I am not unwilling to adopt for the creed of my personal politics, the dying prayer of a great man, 'Ut ita cuique 'eveniat ut quisque de Republica mereatur.'

"The three general grounds then on which I shall proceed to examine your conduct are, your apostacy—your present pretexts for opposing reform—and the probability of such a future conduct in you as may render it extremely important that the people should justly appreciate your character.

"Your entrance into public life was marked by circumstances more favourable than any English statesman has ever experienced. With all the vigour of your own talents, with all the reflected lustre of your father's character, you appeared at a moment, when the ungracious toil of opposition was almost past, when little remained but to profit by the effect of other men's efforts, and to urge the fall of a tottering ministry, whose misconduct had already been fatally proved by national misfortune. The current of popularity had already set strongly against the minister. The illusions of American conquest and American revenue were dispelled. The eyes of the people were opened to the folly of the cabinet. You had only to declaim against it. The attention of the people was called to those defects in their constitution, which permitted such a cabinet so long to betray the public interest, and to brave the public opinion. You had only to put yourself at the head of the people, to declare yourself the leader of reform. In this character you had recourse to the same means, and you were assailed by the same objections, with every past and every future leader of reform. Despairing that a corrupt body should spontaneously reform itself, you invited the interposition of the people. You knew that dispersed effort must be unavailing. You therefore encouraged them to associate. You were not deterred from appealing to the people by such miserable common places of reproach as those of advertising for grievances, diffusing discontents, and provoking sedition. You well knew, that in the vocabulary of corrupt power inquiry is sedition, and tranquillity is synonimous with blind and abject obedience. You were not deterred from joining with the associations of the people by being told they were to overawe parliament. You knew the value of a jargon that does not deserve to be dignified by so high a name as sophistry. You felt for it that contempt which every man of sense always feels, and which every man of sincerity will always express.

"As you were regardless of the clamour against the necessary means for the accomplishment of your object—as you knew that whoever would substantially serve the people in such a cause, must appeal to the people, and associate with the people; so you must have had a just and a supreme contempt for the sophistry which was opposed to the measure of reforming the representation itself. You were told (every reformer has been told, and every reformer will be told) that of innovations there is no end, that to adopt one is to invite a succession; and that though you knew the limits of your own reforms, you could not prescribe bounds to the views which their success might awaken in the minds of others. To so battered a generality it was easy to oppose another common place. It was easy to urge that as no government could be secure, if it were to be perpetually changed; so no abuse could be reformed, if institutions are to be inflexibly maintained. If they call the courage of a reformer temerity, he is equally entitled to represent their caution as cowardice. If they speak from conjecture of his future interest in confusion, he may, from knowledge, speak of their actual interest in corruption.

"They told you that extravagant speculations were abroad; that it was no moment to hope for the accomplishment of a temperate reform, when there were so many men of mischievous and visionary principles, whom your attempts would embolden, and whom

your reforms would not content. You replied, that the redress of real grievances was the surest remedy against imaginary alarms; that the existence of acknowledged corruptions is the only circumstance that renders incendiaries formidable; and that to correct these corruptions is to wrest from them their most powerful weapon.

"By a conduct thus natural you pursued your measure. Of that conduct indeed I should not now have reminded you, had it not been for the sake of contrasting it with some recent transactions. It is almost unnecessary to add that you found it easy to practise on the generous credulity of the English people, and that for the first time in the present reign, the king's advisers thought fit to choose their minister from the knowledge of his being popular, actuated by the double policy of debauching a popular leader, and of surrounding with the splendour of popularity, the apostate agent of their will. But with the other parts of your public life I have nothing to do, nor will I trace minutely the progress of your pretended efforts for parliamentary reform.

"The curtain was dropped in 1785. The farce then closed. Other cares then began to occupy your mind. To dupe the enthusiasts of reform ceased to be of any farther moment, and the question itself slept, until it was revived by Mr. Flood in 1790.

"There was little danger of the success of his motion, maintained by himself with little pertinacity, and seconded neither by any parliamentary connexion, nor by any decisive popular opinion. To it therefore you thought a languid opposition from you sufficient. You reserved more active opposition for more formidable dangers, and you abandoned the motion of Mr. Flood to the declamation of Mr. Grenville, the logic of Mr. Windham, and the invective of Mr. Burke.

"That more formidable danger at length arrived. A reform in the representation was brought forward by a gentleman of the most powerful abilities, of high consideration in the country, and of a character the most happily untainted by any of those dubious transactions of which political parties are rarely able, for any long period, to escape at least the imputation. Such a character was odious to apostacy. Such an enemy was formidable to corruption.

"The debate on the notice of Mr. Grey illustrated the fears of corrupt men, and the malignity of apostates. It was then that alarms which had slumbered so long over incendiary writings were suddenly called forth by the dreadful suggestion of a moderate, and therefore, of a practicable reform.

"Nor is the reason of this difficult to discover. These incendiary publications might render signal service to a corrupt government, by making the cause of freedom odious, and perhaps by provoking immatured and ill-concerted tumults, the suppression of which might increase the strength, and justify the violence of government. No such happy effects were to be hoped from the proposition of Mr. Grey. Impracticable schemes are never terrible, but that fatal proposition threatened the overthrow of corruption itself. Then your exertions were indeed demanded: Then your pious zeal for the constitution was called forth.

"Theoretical admirers of the constitution had indeed supposed its excellence to consist in that trial by jury which you had narrowed by excise; and its salvation to depend on that liberty of the press which you had scared by prosecution. Such might have been the idle ravings of Locke or Montesquieu. But you well knew its practical excellence to depend on very different things.

"Already, in your imagination, that citadel of the constitution Queenborough, that sanctuary of freedom Midhurst, tottered to their foundations. Already, even Cornwall itself, the holy land of freedom, was pierced by the impious din of reform. Actuated by alarms, so honest and so wise, for such sacred bulwarks of the constitution, no wonder that you magnanimously sacrificed your own character. No wonder that you stopped to rake together every clumsy sophism, and every malignant slander that the most frontless corruption had ever circulated, or the most stupid credulity believed. Nor was it even wonderful, when we consider it in this view, that you should have pronounced an elaborate, a solemn, a malignant invective, against the principles which you yourself had professed, the precise measures which you had promoted, and the very means which you had chosen for their accomplishment. There is something in such a parade of apostacy, which, in the minds of certain persons, may efface those vestiges of distrust and repugnance, that the recollection of a popular conduct in early life must have imprinted.

"The disgraceful triumph of that night will indeed long be remembered by those who were indignant spectators of it. A minister reprobating associations and condemning any mode of collecting the opinion of the people for the purpose of influencing the House of Commons.—He who commenced his career by being an associator, and who avowedly placed all his hopes of success in the authority which general opinion was to have over the House of Commons. He who continued a minister in defiance of the House of Commons, because he supposed himself to possess the confidence of the people. He who gave the first example of legitimating and embodying the opinion of the people against the voice of their representatives. He was the minister who adopted this language. It is not, Sir, on that night to the splendour of your words, nor the music of your periods, that you owed the plaudits of the borough-mongers of Wiltshire or of Cornwall. They take no cognizance of any dexterities of sophistry or felicities of de-

clamation; the pompous nothingness of Abercorn, and the sordid barbarity of Rolle, are more on a level with their understanding and more in unison with their taste. They applauded you for virtues like their own, for impudence in asserting falsehood, for audacity in defending corruption. Their assent was condemnation—their applause was ignominy—their disgraceful 'hear hims' ought to have called to your recollection the depth of infamy into which you had at length plunged."

Gentlemen, it gives me no pleasure to read these violent expressions; whatever opinions may be entertained with respect to Mr. Pitt's conduct in the cause of reform, he is certainly a man of eminence and talents. I shall say nothing farther with regard to him, nor would I have read any thing from this pamphlet, if I had not conceived it to be useful for the defence of my client; you will judge, when reading this pamphlet, which has never been prosecuted, whether it is more or less fit to raise sedition than the hand bill. The truth is that they will admit of no comparison in *that* respect, and I think you will make none between them; I am sure you will say that if this hand bill is a libel, that letter to the right hon. Wm. Pitt upon his conduct in reform, is much more a libel; and yet it has not been prosecuted as a libel; and, I may venture to say, never will be prosecuted; because it has already been circulated through the country, certainly to the hurt of Mr. Pitt's political reputation; and yet Mr. Pitt and the public prosecutor, have thought proper to take no notice of it.

Gentlemen, I might read a great many more passages to the same effect; but I have spoken very long, and am extremely fatigued, and indeed any thing stronger than the passages I have read can hardly be imagined; but before I close upon this point, I must observe that the parliamentary debates, when published in a newspaper, have no privilege, and the publishers are liable to the law against libel or sedition, in the same manner as if the reported speeches had never been spoken in the Houses of Parliament. The privilege of parliament does not protect the members in printing and publishing speeches, that are libellous or otherwise illegal. What then must we think of those reported speeches in the daily newspapers containing every word in the hand bill over and over repeated, but never called in question by public prosecutors?

Gentlemen, you will remember the Archbishop of York's case—he compared some speeches in parliament, which he disapproved of, to the harangues of a Marat or a Robespierre.* No language could be more violent or inflammatory, than that which his grace was pleased to use. The most abominable characters that ever appeared, wretches universally execrated, he compared with the able and respectable managers who are conducting the trial of Mr. Hastings. This was no libel when spoken by the archbishop. He had the privilege of parliament, but the printer of the newspaper had no protection from the known fact, that he only took down from the archbishop's mouth, what his grace had said in the House of Peers. But what followed? Why, gentlemen, the managers thinking themselves insulted, and the House of Commons insulted through them; a motion was made in that house, that the printer should be prosecuted as for a libel. But it is remarkable that the House refused to interfere in the matter. Language nearly of the same effect and tendency, was used in newspapers every day. The practice had been established, and it was necessary for the public safety; and therefore the House would not give orders to prosecute the printer of the archbishop's speech.

Now, gentlemen, you have seen, that a writing of the most inflammatory nature, and containing the strongest expressions against the minister personally, has never been prosecuted as a libel; you have seen, that the strongest expressions used against the managers of Mr. Hastings' trial was not considered as a libel; you must all know the violent expressions that are daily used. Gentlemen, all this can only be accounted for by the fair distinction between the public and the private character of a politician. Mr. Pitt's private character is as safe as any man's in the nation; no person in the House of Commons, no member of parliament can dare to say any thing personally to Mr. Pitt in his private capacity; it is only as a minister that he can be attacked: Mr. Pitt himself in one of his letters alludes to it, by undertaking, both *as a minister* and *as a man*, to support some measure,—I do not immediately recollect what. In short, the distinction between the man and the minister is fully established. What could have given rise to this distinction? Nothing certainly but the acknowledged doctrine that the subject of this country is at liberty to censure the measures of government as he pleases; while the minister in his private character has the same protection that is due by law to other individuals.

Gentlemen, this society at Dundee was assembled for a lawful purpose. They employed the press; but the liberty of the press is unbounded, so far as men only canvass the measures of government, and mean to go no farther. The language as well as the matter is left to the judgment, taste, and discretion of the author, or publisher. But it has been said, that the purpose of the hand bill was wicked and seditious, and that the privilege of the press does not extend to such publications.

Gentlemen, I will not contend that a writing, malicious—seditious in itself, and calculated to raise sedition among the people—can be excused by the fact that no sedition was raised. In general it is true in criminal cases

* See the note, *ante*, p. 276.

that intention is not sufficient to criminate, unless the crime be perpetrated. But in cases of sedition I am disposed to admit that the intention is carried into effect, and the crime is committed by the act of publishing the seditious writing. But, gentlemen, what are the circumstances here? It is not proved that the purposes of this society went any farther than a moderate and a rational reform. The hand-bill complained of the very grievances which are always enumerated by reformers; and it was not either intended or calculated to raise sedition. It is true indeed that every publication against the measures of government must necessarily raise discontents in the minds of the people; for no such writing ever was published with any other intention than to show the people what their true interest was, and that it had not been consulted by government. Discontent is unavoidable where public measures are wrong, or thought to be so. But discontent is very different from sedition. The people may be perfectly quiet amidst the greatest discontents. To render a writing seditious, it must be intended or calculated to urge the people to actual violence, and how can it be said that the hand bill is of that description? Where is the excitement to illegal acts of any sort? What outrages had the society, or any of its members committed? There was a petition to parliament; was there any outrage in that? It was stated by all the witnesses, that the intendment of the hand bill was, to rouse the minds of the people, in order that they might again apply for a moderate reform; and the words "they were not to be discouraged by their defeat in the House of Commons," were very naturally explained; Mealmaker, the author, told you their true meaning, that though the House of Commons had not granted them their desire, they hoped, that by perseverance, it would become a popular cause, and that the House would thence be induced to grant them their wish.

Gentlemen, you will attend to the averments in the hand-bill, in which nothing whatever is stated or even insinuated that has not been stated by every set of reformers, those who are best known to have no wish but for a moderate and a rational reform, and those who have been most exemplary for the legality of their conduct. The different grievances alluded to in the hand bill, and which have been so uniformly repeated, prove that the panel and his friends had the same common object with the most moderate and constitutional reformers.

As to the concern which Mr. Palmer had with the hand bill, I think I may be allowed to say, that he certainly was not the author of it. Mealmaker composed and wrote it, and the fact is proved as well by his own testimony, as by the other evidence. Mr. Burnett endeavoured to raise a doubt upon this, but the public prosecutor cannot be allowed to contradict his own witnesses. It is proved in the first place, that Mr. Palmer condemned the publication; that he wished there should be none; he was afraid that it might bring them into trouble, from the public prosecutor; and when he was overruled, he used his whole endeavours to prevail upon his friends to soften their expressions, lest they should give offence. All the witnesses mentioned the struggle he made at the general meeting, after the paper had gone through the committee, and it was rather invidious to say, that in softening the language, he meant merely to avoid a prosecution. Would it not have been much fairer, to say that Mr. Palmer had better motives in wishing to moderate the expressions? Mr. Palmer did think there was nothing illegal in the publication of this hand bill, while at the same time he was of opinion, that it was an inexpedient thing, and did not suit the purposes of this society; and he wished to moderate the terms of the hand bill, because he did not choose to inflame the minds of the people by warm or intemperate language.

Gentlemen, a topic of some delicacy remains—I beg leave to state, though with hesitation, that consideration may be due to certain peculiarities in the character of Mr. Palmer. I feel much pain in alluding to them, but I must be excused. Gentlemen, Mr. Palmer is a person whose ideas upon many subjects, and upon one in particular, are so very singular that though he actually had upon this occasion, gone to a greater degree of extravagance than could have been justified in another man, the peculiarity of his mind would have been sufficient to account for his conduct, without the imputation of a criminal intention. As an example of the extravagance of Mr. Palmer's notions upon religion, I shall read some passages from a pamphlet of which he is the acknowledged author, vindicating his principles as a Unitarian.—No! I cannot read these wild effusions—I am afraid they would be considered as unfit for a public reading. I shall only say that no one upon reading the pamphlet (if indeed it can be read) would think the mind of the author perfectly rational.*

* The state of Mr. Palmer's mind was afterwards taken notice of in the House of Commons; and as the merits of his case were brought under consideration, I insert the conversation which took place respecting him.

Mr. *Sheridan* rose to present a petition from the Rev. Thomas Fysche Palmer, an unfortunate gentleman who some time since was fellow of Queen's College, Cambridge, and was at present on board a transport for Botany Bay, in consequence of a sentence of transportation passed upon him for sedition by the high court of justiciary in Scotland. The petition stated, that the sentence was "illegal, unjust, oppressive, and unconstitutional;" and prayed such

This is a material circumstance to be considered in deciding upon the case. Mr. Palmer might be excused for some imprudence, or misconception in expressing himself upon a political question, when it appears that upon a subject of still greater importance, he fell into the most unmeasurable extravagance.

Gentlemen, after having detained you so long, I leave the Prisoner in your hands.

Lord *Abercromby*.—Gentlemen of the jury;

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relief as the House in its wisdom should see fit to afford. As far as he (Mr. S.) had been able to examine the sentence, his opinion, with regard to the illegality of it, was precisely similar to that of the unfortunate sufferer.

Mr. *Pitt* said, this was a petition against the sentence of a court of justice, solemnly and deliberately pronounced; it appeared to him to be of a most extraordinary nature, and one which he should hold it his duty, in the first instance to oppose; for there never had been, as far as his recollection served, an instance of an application to that House, to interpose its authority between the judgment and the execution of a sentence pronounced by a competent court; the proper and regular mode of application for mercy would be to the crown. It it could be shown that the judges had acted either illegally or unjustly, the House of Commons might interfere by an address to remove them, or by an impeachment. But in this case a man, tried, convicted and sentenced by a competent tribunal, when the sentence is about to be carried into execution, applies to the House of Commons to travel out of their province, and interfere with the duties of the executive power: after sentence was passed, all that could be given him was mercy, which was vested solely in the crown by the constitution of England. He considered the motion equally unprecedented and improper.

Mr. *Fox* said, he hoped the right hon. gent. would not persist in his objection. The right hon. gent. had observed, that no appeal lay to that House to prevent the execution of a sentence, though complained of as illegal, unjust, and unconstitutional. It might be possible that he (Mr. F.) had totally mistaken the British constitution; but if he had not, he would maintain that it was a principle, universally admitted that a petition might be presented to the king in parliament, in other words, to the legislature, against the decision of any court of justice, from which there was no appeal by law to any court of judicature. In pursuance of this principle it was, that, on the opening of every session, the House appointed a committee upon courts of justice, which was always considered to be sitting and exercising a perpetual and vigilant superintendency over all the inferior courts, that the people might know that their representatives were ready to receive complaints for which redress could be obtained in no other place. In the case set forth in the petition, the House well knew that there was no appeal to any judicial court; they could not therefore refuse to take the petition into consideration without deserting their duty. And it was certainly high time for the benefits of the English laws to be extended to all parts of the United Kingdoms, when it had been determined that there lay no appeal from the court of justiciary in Scotland to the House of Lords in England. If they were also exempt from the appellant jurisdiction of the House of Commons, what remedy was there for the utmost possible abuse of the principles of justice in their proceedings? Supposing that, after sentence was pronounced, the House of Commons had been applied to by petition, stating unanswerable allegations of fact, to interfere and reverse it in the case of lord Russel or Algernon Sydney, he fancied it would have startled even the men in power of those times if they had been answered as they were, "We acknowledge that the judgments against them are illegal and unjust; but it would be unprecedented in us to interfere while the sentence is in process of execution. Let them be beheaded, and then we will reverse the sentence completely fulfilled." The chancellor of the exchequer had said, that an application to them in their legislative capacity was irregular and improper; in such a declaration the right hon. gent. had been mistaken: in the present case it was to be observed, that it had been decided, that no appeal lay to any superior court of law; consequently no alternative remained for a man complaining of the illegality of a sentence, but a petition for its reversal to the legislature. A petition to his majesty for mercy was of a nature totally different; it generally set out with admitting the legality of a sentence, but prayed an abatement on the ground of mercy. The only resource, as far as he could see in the present instance, was the one that had been taken. And whatever might be the opinion of the right hon. gent. with respect to the particular merits of the case, he trusted that he would not attempt to give so deep a wound to the constitution as refusing to hear it would certainly be.

Mr. *Pitt* said he believed there was not a single instance of such an application to that House. He admitted that it was the duty of parliament to inquire into and rectify the abuses of the courts of justice. But in what manner? not as a court of appeal, but as a court possessing the power of inflicting censure and punishment on those who abused their judicial authority. To receive such a petition as that offered, would form a precedent for making parliament a regular court of appeal, and confound the legislative and judicial functions, the distinct separation of which had been justly held to be one of the greatest advantages of the British constitution. The proper, and indeed the only regular mode of pro-

at this late hour, and after the close and fatiguing attention you have paid to this trial, I shall detain you but a short time with a few remarks upon the nature of this case, which I confess is a very serious one indeed. In this case, gentlemen, two separate questions occur for your consideration.—The first is, whether the writing libelled on, be of a seditious tendency, or perfectly innocent? for, if you think that it is altogether innocent,

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ceeding, would be, by moving to impeach the judges by whom the sentence had been pronounced. At the same time he did not at present wish to deliver any decided opinion upon the subject, not having formed one. His only anxiety was, that substantial justice should be done; and as this was a point of very great importance, of which no previous notice had been given, and as he wished to examine more into the precedents on the subject, and not to hazard a rash opinion, he trusted a motion he should propose would meet with no opposition, viz. "That the debate be adjourned till Thursday or Monday; but as Thursday had some business allotted to it, and was rather too early, till Monday the 3d of March." This he expected would meet with general approbation, as no doubt gentlemen on both sides would wish to consider more deliberately a point of such momentous importance.

Mr. *Fox* would not oppose the question of adjournment, because the point undoubtedly called for mature consideration. He was not prepared to state what precedents might be found, which would support an application to that House for its interference for the suspension of execution of judgment after sentence passed; but undoubtedly there were precedents for reversal of judgment after execution; and a man must be of a very curious turn and composition of mind, who would support the one and resist the other. He did not imagine that his hon. friend would object to the delay, as no doubt he would wish to have before him all the knowledge which could be collected on the subject.

Mr. *Pitt* said, that as the interval before Thursday might be too short a time for maturely considering the question of the petition, he should wish the debate upon it to be adjourned till Monday next.

Mr. *Sheridan* said, after the good effects that had arisen, or rather were likely to arise in the present instance from reconsideration, in consequence of what had been said by his right hon. friend (Mr. Fox), he could have no manner of objection to the adjournment.

Mr. *Francis* wished to call the attention of the House to a point, which, though of importance, had been overlooked by gentlemen on both sides, viz. the actual situation of the unfortunate petitioner. He hoped his majesty's ministers would not put in execution the sentence till the petition had been discussed; and by that means deprive the petitioner of all possibility of benefit or advantage from the result of the discussion.

Mr. *M. A. Taylor* said, that, after the great doubts that had been entertained by persons competent to give an opinion on the subject, both with respect to the relevancy of the libel, and the legality of the sentence, the execution of that sentence ought to be suspended till the House had come to some decision on the various relative points in question. Antecedent to that, it would be indecent in ministers to suffer a single step to be taken towards the execution of the sentence. Mr. Taylor said, that it was not a few whispers, as had been insinuated, but the serious doubts of many men of great repute in the law, that had been held, of the legality of this sentence, which ought to weigh in the minds of the House. He could not therefore agree to the adjournment, without first receiving some assurance, that the execution of the sentence should be postponed.

Mr. *Dundas* begged the House not to adjourn with an impression on their minds that government intended the smallest delay in the execution of the sentence. As far as concerned him, the sentence had been carried into execution some time, for the warrant for the transportation of Mr. Palmer had passed the council board, and he, with other convicts, was already received on board the transports appointed to carry them to their place of destination. If the execution of it were to be delayed in consequence of such a petition as that offered to the House, applications of the same sort might be expected from every other person in a similar situation with Mr. Palmer. The opinion of the hon. gent. (Mr. Taylor) upon the legality of their sentences, had been given as a matter of authority; they were not, however, to be directed by presumed authority, but by reason; and therefore he should consider it as no other than the hon. gent's. own opinion, against which, with great deference to him, he was ready to oppose his own; for he had not yet heard a single argument which had induced him to alter an iota of those sentiments which he had declared in that House to be the sentiments that he entertained on the subject, when it had been first alluded to, and which he was ready to support, whenever gentlemen should be disposed to bring forward the discussion; viz. that the sentence was legal; and that the court of justiciary, in passing that sentence, had exercised a sound discretion. He condemned the conduct of gentlemen on the opposite side as unnecessarily tardy and procrastinating, since they had neglected the business they had undertaken for so long a time, and now called upon him to stop the execution of the sentence. If they had been so eager, and in any expectation of obtaining the interference of the House to have the

then there is no occasion to inquire, who was the author of it? who the publisher of it? or by whom it was circulated? That therefore is the first question for your consideration.—Gentlemen, in judging of the relevancy the court had occasion to give their opinion upon that question. The decided opinion of the court was, that the writing libelled on, is of a seditious tendency: but, gentlemen, neither our opinion, nor the opi-

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sentence respited, they might have offered the petition at any former time since the meeting of parliament.

Mr. *M. A. Taylor* said, that where a petition for mercy was presented to the king, it was always customary to suspend the execution of the sentence till the petition had been decided upon. Surely the same rule ought to be observed where a petition was presented to parliament complaining of a sentence as illegal.

Mr. *Adam* said, it afforded him some satisfaction, that the chancellor of the exchequer had not persisted in the hasty rejection of the petition which he had first suggested. Let that right hon. gent. recollect that this case of Mr. Palmer was a case in which there was no appeal to any court of law, and that parliament was the only place to which the petitioner could look for redress. The petition was of so much importance, that, with all the inconvenience to which he must expose himself, he would defer making the motion he intended to have made that day until the House had decided upon it. He wished, however, to obtain that decision on Thursday the 27th, because the transport in which Mr. Palmer was embarked, waited only for a convoy. If the transport should sail before the decision of the House upon the petition, there would be no occasion to search for precedents; for it would not then be an application for the interposition of the House between sentence and execution, but for the House to reverse a sentence after execution.

Mr. *W. Smith* said a few words to the same effect.

Mr. *Fox* felt himself particularly interested in the turn which the debate had latterly taken. He had not paid any visit to Mr. Palmer, whom he had never seen; but had conversed upon his case with gentlemen who had at different times had interviews with him. Though he maintained the power and the duty of parliament to superintend and control the juridical proceedings of other courts, yet he thought it prudent to resort to that control in cases of necessity only. As his hon. and learned friend (Mr. Adam) was about to bring in a bill for allowing an appeal from the court of justiciary to the House of Lords, in which the committee would be instructed to give it a retrospective operation on all the sentences of the year 1793, it might be best to wait for the chance of an appeal to the regular supreme court of justice. Of the subsequent delay he could say nothing. A petition little more than four weeks after the meeting of parliament, was presented to the House. Ministers desired time to consider of that petition; and it was at least incumbent upon them to suspend the execution of the sentence, as long as they themselves required to consider of a petition complaining of the illegality of the sentence. A secretary of state, if a petition had been given him to present to his majesty in behalf of a condemned criminal, and he had doubted of the propriety of presenting it, certainly would not hesitate in delaying the execution till his doubts were satisfied. He had no reason to expect at the time that his friend's motion would be so readily disposed of, and he was not sure that the advice he gave might not have influenced in some degree the conduct of Mr. Palmer and his friends in drawing up the petition; that as little time as possible might be lost, he moved that the debate be adjourned to Thursday the 27th.

Mr. *Adam* declared, he spoke without the least knowledge of the unfortunate persons on board the transport. He spoke independently of every consideration, except that of his duty as a member of that House, and in that view it did seem to him that this was a question on which the House ought not to hesitate a moment, either to agree to delay the sailing of the vessel, or to take the subject into consideration as early as possible.

Mr. *Whitbread*, sen. called the attention of the House to the peculiar case of the petitioner, which, he said, was an object well worthy their serious consideration: Mr. Palmer was a man descended from one of the most ancient and honourable families of the county of Bedford; and the unfortunate situation in which he was placed, had been the cause of inexpressible grief to his numerous friends; even supposing the sentence pronounced upon him legal and just, a question upon which he felt himself by no means competent to decide, he was nevertheless an unfit object of prosecution and punishment, being considered, all his life, a man somewhat deranged in his intellects. He believed from his heart the petitioner had no evil intention against the government of this country; and he was firmly persuaded that any twelve gentlemen of Bedfordshire, who knew him, and were summoned on a jury of lunacy, would bring him in insane. He thought it his duty, as a member of parliament, and also in compliance with the applications of the friends of Mr. Palmer, to give the House this information, which fell within his own particular knowledge.

Mr. *J. Smith* said, he should vote for the earliest day, because, under all the circumstances, that appeared to him be the best. But he could not help making this observation—If the principle maintained by the secretary of state was carried to its full extent,

nion of any counsel, is binding upon you; and I am happy to think, and happy to say, that that is the case; for it is not only your right and your privilege, but it is your indispensable duty to form your own unbiassed judgment upon that writing, and to say, whether it be, or be not, a seditious writing.

Gentlemen, you have been told at great length, that it is not a seditious writing; because in this free country it is the right of every man to canvas the public measures of ministers, and the measures of government. Gentlemen, I agree that such is the right of every man in this free country; and I am happy to think that that is the case: but, gentlemen, no man is entitled, under the pretext of canvassing the measures of government, to commit a crime; and the question for your consideration is, whether a crime has or has not been committed? In this case it will be for you to consider, whether it can be called a fair and a legal discussion of the measures of government to tell the people of this country, that "the portion of liberty which they once enjoyed is fast setting, we fear, in the darkness of despotism and tyranny." I say, gentlemen, it will be for you to consider, whether that can be called a fair, and a legal discussion of the measures of government. In like manner, you will consider, how far telling the people, "that they will soon be sunk in the depth of slavery, if you prevent it not by your well-timed efforts,"—whether that can be considered as such a canvassing of the measures of government as any subject of this country is entitled to. In like maner, you will consider, whether telling them "Is not every new day adding a new link to our chains? Is not the executive branch daily seizing new, unprecedented, and unwarrantable powers? Has not the House of Commons (your only security from the evils of tyranny and aristocracy) joined the coalition against you." It is for you to weigh, for you to form your own judgment, whether these expressions, and many similar expressions that you will find in this writing, and which I will not detain you with running over, are to be considered as such a fair discussion of the measures of government, or of the conduct of public men, as any subject of this country is entitled to?

Gentlemen, you have been told, that reform is a fair and proper object. It may be so: but the question for you to consider is, how far such a writing as this can be considered as tending to obtain such a reform, or as tending, in the terms of the libel, to excite a spirit of sedition in this country?—"We have done our duty, and are determined to keep our posts, ever ready to assert our just rights and privileges as men, the chief of which we account the right of universal suffrage, in the choice of those who serve in the Commons' House of Parliament."

Gentlemen, the right of universal suffrage is a right which the subjects of this country never enjoyed; and were they to enjoy it, they would not long enjoy either liberty, or a free constitution. You will therefore consider, whether telling the people that they have a just right to what would unquestionably be tantamount to a total subversion of this constitution, is such a writing as any person is entitled to compose, to print, and to publish.

The learned counsel who spoke last, told you that I was under a mistake in stating that the freedom of the press, consisted only in being free from a licenser. You were told,

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the sentence of the court of justiciary must be executed, even if it should be death; and the only remedy to be allowed to the person complaining, was, an inquiry into the justice of his sentence after his execution. He wished to know whether there was in nature any thing more absurd than such a proposition.

The question was then put upon the amendment, and the debate upon Mr. Palmer's petition was adjourned to Thursday, when it was brought up, read, and ordered to lie on the table.

On a subsequent day Mr. Sheridan remarked that, "an honourable and worthy member, had upon a former night, stated, with motives which no doubt did honour to his feelings, an insinuation respecting the sanity of Mr. Palmer. This unfortunate gentleman, now on board the vessel which is to convey him to Botany Bay, had, in a letter which he held in his hand, declared that not all the severities of his unmerited fate, had touched him so sensibly as this imputation; and he earnestly desired that it might be understood, that in the petition which he had offered to the House, and to the foot of the throne, he had demanded justice, not implored mercy. The mistake had probably arisen from the circumstance of there being a brother of this gentleman, a clergyman, who laboured under the misfortune, mistakenly, and no doubt kindly, attributed to him." Mr. Sheridan was followed by Mr. Whitbread, junior, who "alluding to what had fallen on a former night from a gentleman very near and very dear to him, respecting an insinuation of Mr. Palmer's insanity: declared that he believed the idea was suggested by the purest, the most humane motives; but he bore equal testimony to the sanity of Mr. Palmer; he had seen him, known him, and had the honour of corresponding with him; he was a man of the most engaging manners, and of the most enlightened mind. The greatest proof, if any proof were necessary, of his firmness and fortitude, was, the undaunted and philosophic mind, with which he bore up against this unheard of oppression. He was a man on whom 'The gods 'themselves may look with envy.' See in the New Parliamentary History, Vol. 30, the debate in the House of Commons, March 10th, 1794.

that that was altogether a mistake; because that, in this country, men are entitled to canvass the measures of government: but I must again repeat, upon the most constitutional authorities, particularly judge Blackstone, that there is nothing else in which it consists or can consist; because, though every man is entitled to canvass the measures of government, if he commits a crime, he must be brought to punishment for it, and therefore every man must necessarily write, and print, and publish at his own risk. And Blackstone says, that the best and truest security of the liberty of the press, is the right of bringing persons to trial by a jury of their country for seditious, treasonable, or slanderous expressions. The liberty of the press therefore, I must repeat, has, in my humble apprehension, been most improperly introduced into this cause; because it has no connexion with the question you are to try. And, as I before stated, you have but two questions to consider, whether this be a seditious writing or not? and if it be, whether the panel has been guilty of writing, and printing, and publishing that libel?

Gentlemen, I shall leave this part of the case to your own unbiassed judgment;—you will consider the whole of the evidence;—you will judge of the whole scope and tendency of it; and upon that you will form your opinion, whether it is an innocent publication, or whether it was not a publication tending to raise a spirit of discontent in this country?

There were some circumstances mentioned as tending to exculpate the panel, which I am sorry to say struck me (I do not know how they may affect your minds) rather as aggravations, and rather tending to evince that this writing is of a seditious tendency.—It was mentioned, that it was published in the month of July last, after the French revolution had taken place; after the progress of that revolution had agitated the public mind; after unheard-of crimes, unexampled in the history of nations, had been committed, and all the horrors of that revolution had taken place; after the writings of Paine had been disseminated with the most unremitting assiduity; after they had poisoned the minds of the lower order of people; and after an alarm had been universally spread in this country:—That was the season chosen for the publication of this writing. You will consider; but as far as I can judge, these circumstances rather in my mind seem still farther to evince the evil tendency of this paper.

Gentlemen, having stated these observations, I shall leave it with you to consult your own understandings, and to say, whether this writing can be considered innocent, or a writing of a seditious tendency.

If you, gentlemen, shall find the seditious nature of this paper established, your next consideration is, whether the panel be guilty of writing, printing, publishing, or circulating that writing?—And, gentlemen, the libel states, that the panel "has been guilty of writing, or causing to," &c. [See the Indictment]. If therefore, upon considering the evidence, you should be of opinion, either that this writing was printed, or caused to be printed by the panel, or that he was art and part in publishing, or causing to be published; if you think he was guilty of doing it entirely, or that he was art and part in the publication, in that case you will be justified in a verdict finding him guilty, either in whole or in as far as you find it proven. On the other hand, if, upon considering the evidence, you should be of opinion, that he neither wrote, printed, nor published, nor was art nor part in so doing, in that case it is equally clear that you will pronounce a verdict acquitting him of the charge.—Therefore, gentlemen, it is material to observe, how far the charge is brought home to him by the evidence. I shall not, at this late hour, and after the attention you have paid to the evidence, run over it again. In general, I shall state to you what appears to me to be the substance and the import of it.

With regard to the writing of this paper, the evidence amounts to this, that Mealmaker drew the first draft or scroll of it, which he produced at the meeting of this society; that he gave it to the panel to revise; that the panel carried it with him; that it was again produced at another meeting afterwards; and that additions were made to it, which the witness swears he believes were made by Mr. Palmer. In this he is corroborated by various other witnesses, and above all, by James Ellis, the friend and the visitor of Mr. Palmer, who swore pointedly to the manner in which the writing was revised by Mr. Palmer, corrected by him, and additions made to it. It was stated, in alleviation, that he took pains at these meetings to soften the expressions. Ellis gives a very particular account of that, which well merits your attention: he says, Mr. Palmer proposed to soften the expressions, although he told the meeting that, in his opinion, they were as true as the gospel, and in his mind innocent, but that they might be taken hold of by people in power, and for that reason he desired that the expressions should be softened. Gentlemen, various other witnesses mention the same thing.

As to the question concerning the printing you have it in evidence, that the panel proposed, at the general meeting, for the sake of saving expense, that it should be printed in the newspapers: nay, that Mr. Palmer actually received from the secretary to the society the payment of the expense of printing. You have also the letter to Morrin. You have Morrin swearing to their being printed, and about 900 of them transmitted to Mr. Palmer. You will be to consider, whether that does not amount to a complete proof as to the printing.

The only remaining question is the publishing; and upon that you have the evidence of the booksellers. Their names are Leslie and Miller, who swear, that Mr. Palmer gave each of them a parcel of papers, which they distributed. This is confirmed by Smiton, who received a letter from him, and a parcel of papers. I have heard no objection to the validity of these witnesses. You will consider how far they are to be believed.

Gentlemen, with these observations I leave this case with you. There is only one farther circumstance that I shall mention. Much has been said of the purity of the intentions of the society: it is said, they had nothing in view but moderate reform. But, gentlemen, you will consider, how far that is consistent either with the tenor of the address itself, or with what is sworn to by Mealmaker, who drew the first draft of it, and who swears expressly that at that time, he had no second petition in his contemplation, and that what was afterwards to be done would have depended upon circumstances. And I confess I much fear that Mealmaker is here telling the truth, and that if they had not been attended to, the conduct of this society would not have proved so pure as their intentions are said to have been.

Gentlemen, I shall detain you no longer. I leave this case with you, not doubting but you will return a verdict, upon that fair opinion which you will form in your unbiassed judgment, such as will exonerate yourselves, and prove serviceable to your country.

You will return your verdict in this place, at two o'clock to-morrow.

Friday, September 13, 1793.

At two o'clock, the Jury returned the following

VERDICT.

At Perth, the 12th day of September, 1793.

The assize before-mentioned having inclosed, they made choice of James Calderwood Durham to be their chancellor, and Andrew Whyte to be their clerk; and having considered the criminal libel, raised and pursued at the instance of his majesty's advocate, for his Majesty's interest, against Thomas Fyshe Palmer, clergyman, some time residing in Dundee, and commonly designed Unitarian Minister, present prisoner in the Tolbooth of Perth, panel; and having heard the interlocutor of relevancy pronounced thereon by the Court, evidence adduced in proof of the libel, and evidence adduced in exculpation of the panel; they all, in one voice, find the Address mentioned in the libel to be a seditious writing, tending to inflame the minds of the people; find, that the panel was art and part guilty in writing the said Address, and that he is guilty of causing the said Address to be printed, and that he is guilty of distributing, and causing to be distributed, the said seditious and inflammatory writing. In witness whereof, their said chancellor and clerk have subscribed these presents, in their names, and by their appointment, place and date as above.

(Signed) JA. C. DURHAM, *Chancellor.*
ANDREW WHYTE, *Clerk.*

Lord *Eskgrove*.—Gentlemen of the jury;—You have executed your important trust with the greatest attention: you have returned a clear and accurate verdict, which I am persuaded will prove a lasting blessing to your country; and you are now discharged from your attendance.

It only remains, at the conclusion of this trial, to do our duty, in respect of the punishment to be inflicted upon this gentleman at the bar, who stands convicted by his country. Your lordship will have the goodness to give your opinion of what punishment ought to be inflicted.

Lord *Abercromby*.—My Lord;—After a fair and an impartial inquiry, in which every possible indulgence was shown to the panel at the bar, he stands convicted, by the unanimous voice of a jury of his country, of a crime the most heinous, and of a most dangerous nature. It now becomes the province of the Court to say what punishment shall follow upon this conviction. And it is with peculiar reluctance that I am constrained to observe, that, deep and heinous as the crime is, in the present instance it is accompanied with circumstances of peculiar aggravation. My lord, in the first place, I consider the time when this crime was committed as an aggravation of the offence; your lordship knows, and every person now present knows with what industry, with what uncommon assiduity, a spirit of discontent, of groundless discontent, and of sedition, was attempted to be excited in this country not many months ago. My lord, by the virtuous exertions in every corner of the country, of men of every rank and every description, all uniting in one voice of loyalty and attachment to the country and the constitution, that spirit of discontent which some months before had so violently raged, was, in a great measure, subdued.

My lord, in the month of July last, this country was enjoying peace and tranquillity—all alarm had ceased; and it is impossible for me not to feel, and feeling it, not to express, that the object of the panel in composing, in printing, in publishing this hand bill, as it is called, was to excite that spirit which had awakened so well-grounded an alarm in this country, to raise and foment sedition.

My lord, there is another circumstance which I consider as an aggravation of the crime; and that is the situation in life, and the character of the panel. My lord, he is a clergyman, whose peculiar duty and whose province it is, to instruct citizens in their duty to God and to man, and not become an exciter to crimes of the most dangerous

nature.—My lord, it affords matter of much melancholy reflection to see a man of liberal education, a man of his station—of his appearance—of his knowledge—of his talents, associating himself with, making himself a member of such societies as that of the Friends of Liberty, as they call themselves, in the town of Dundee,—of a club of such men, as we saw yesterday were the president and secretary,—to see Mr. Palmer a member of that society, telling them, in express terms, that every word in that address was as true as the gospel;—nay, telling them so, when that address contained expressions which, he himself was at pains to prove, were stronger than even those infamous expressions which it now contains. My lord, is it to be wondered that the minds of the lower order of men, such as we saw yesterday, should be poisoned, when we see persons of Mr. Palmer's situation, and possessed of his talents, descending to such arts?—When we see such a man taking from these weavers the fruit of their honest industry, which ought to have been applied in supporting themselves and families, for the purpose of defraying the expense of printing such a paper,—a paper, which a jury of this country have properly denominated a seditious writing, tending to inflame the minds of their fellow citizens, to excite them to tumult, his crime is much aggravated.—And here observe, that, unfortunate as Mr. Palmer is, he is, in one circumstance, a fortunate man; that this writing, and the art with which it was inculcated, have not led these deluded men to go on any farther; for, if this address of his, calculated to rouse them from their lethargy, had produced the slightest insurrection, had it produced the slightest tumult, tending to attain the objects of this address, then, he and they would have been involved in the guilt of high treason; and then Mr. Palmer would have been to answer for the blood of these men deluded by him.

My lord, were I not unwilling to load the unhappy man at the bar, with all the aggravations that might be mentioned, I might add, that even the nature of the defence set up by him yesterday is an aggravation of the crime charged against him; for your lordship knows, that that defence principally rested upon a bold and a confident vindication, which he set up in the face of his country, of that very writing, and of those very measures which he had pursued. My lord, we were told that, by the law of this country, every subject and every citizen was entitled, under the pretence of canvassing the measures of government and the conduct of ministers, to publish, to circulate, and to paste upon the walls of every town in the country, seditious writings, nay treason itself; for if public measures only are canvassed, there is no crime.—My lord, if this were to be the case, no crime could be committed, and no punishment inflicted.

My lord, I am unwilling to detain your lordship longer, or load the unhappy man at the bar.—I shall therefore conclude with humbly soliciting the mildest punishment which, under all the circumstances of this case, it appears can with propriety be inflicted.—And, my lord, that is, that the panel at the bar, Thomas Fyshe Palmer, shall be transported for the term of seven years, to be computed from this day, in the terms and under the regulations contained in the late act of parliament.

Lord *Eskgrove* perfectly coincided with the sentiments just expressed. I lament particularly, that it should have been thought necessary, for the panel's defence, to have advanced doctrines which were heard with astonishment, and which I consider with detestation; I mean that doctrine to which your lordship last alluded. We live in a country, where we are told that every man is at liberty, under the pretence of censuring the mismanagement of ministers, to paste up and circulate that which tends to inflame the people, and to excite them to insurrection and rebellion, and to do it by expressions of the grossest falsehood; that it is lawful to stir up sedition even by falsehood. To assert our constitution to be worse than it is, although the consequences can be merely insignificant to the world at large, is a false attack upon the King, the Parliament, and the Constitution; and still the law of this country is so defective, as that this shall pass with impunity! This is a doctrine entirely new to me. It is not proved by the circumstance of many such crimes having passed unnoticed, therefore they should always pass; but it is necessary, for the peace of this country, that that doctrine must be declared to be false.

My lord, with regard to the punishment, I always shudder when it is incumbent upon us to pronounce a punishment of this nature against a person, such as the panel at the bar. But, my lord, we can make no distinction of persons, and if there was room for distinction, I hold that the more dignified the situation of the offender, the greater is his crime, and the greater ought to be his punishment; it is but little short of going the length that your lordship has pointed out, which might have called upon us, in certain circumstances, to have pronounced the sentence of death. The punishment your lordship has suggested is the most applicable of any, for this reason: in the first place, it is justified by precedent in the high justiciary court of this country; a sentence of the same sort, for a greater period of time, was pronounced.* But what is necessary for us to consider, is the consequences of this sentence that we shall award. How should I reconcile it to the Judge of my conscience, to send a seditious incendiary from the country of Scotland to the country of England, to propagate the

* See the sentence passed upon Mr. Muir, p. 236, of this volume.

same mischievous principles? Just as if one should catch a man with a lighted torch in his hand, and, in place of extinguishing his torch, and removing him at a distance from his premises, he only sends him into the house of his father or his brother. Such a sentence my conscience could not submit to; I could not reconcile to my mind, to my conscience, and to the public, any other sentence than that which would remove this gentleman from that land, where, in place of propagating the gospel of peace, he has endeavoured to raise up the evil spirit of dissension among us; and by sending him to foreign parts beyond the seas, we shall be taking as much care of our neighbours as of ourselves. At the same time, it is to be hoped, that in a much less time than the period of his sentence, all spirit of dissension among ourselves will be at an end, and the whole body of the people will have united in thanking God for the true liberty they possess, and the happiness they enjoy, under the constitution of this country; and that this unhappy gentleman will have found the error of his ways, and adopted principles and practice more consistent with the honourable profession in which he is.

Mr. *Palmer*—My lords, may I be permitted to speak a few words?

Lord *Eskgrove*—Yes, Mr. Palmer, you may speak.

Mr. *Palmer*—My lords, I can appeal, with conscious sincerity, to the great Searcher of hearts, for the good intentions and uprightness of my conduct. My life has, for many years, been employed in the dissemination of what I conceived to be religious and moral truths, truths which I supposed to be of the greatest importance to mankind. My friends know with what ardour I have done this, at the total sacrifice of all my worldly interests; but, during the late great political discussions that have taken place, it was entirely, naturally impossible, in a man of my sanguine disposition, to remain an unconcerned bystander. I felt as all around me felt; I caught the general impulse; I thought, too, that I perceived that politics were a great branch of morals, if they did not comprise the whole of our duty to our neighbour; for, my lords, would but our superiors, would but all the world, do to one another what they, in like circumstances, would wish to be done to themselves, our petitions would have been answered, and every grievance redressed. I trust, that my politics is the cause of common justice, the cause of benevolence and of human happiness. It was under the influence, I protest, of these considerations, that I was led to enter myself into the society of the Friends of Liberty. I thought, my lords, that a parliamentary reform would enhance the happiness of millions, and establish the security of the empire. For these reasons it was, and with these views only, as God is my judge, that I joined that society of 'low weavers and mechanics,' as you called them, at the Berean Meeting-house at Dundee; and for these reasons too, to gain these ends, that I assented to the publication of this hand-bill; for, the declaration and the test of the society, and all their endeavours, as far as I have been able to learn, were solely confined to that one object of parliamentary reform, and a more equal representation of the people.

It is not, my lords, the first time that I have suffered in endeavouring to benefit others; for this I have borne shame, odium, reproach, and a great diminution of fortune. I hope and trust, that it is my utmost ambition, and all who know me will agree with me that it has been the tenor of my life, to endeavour to add, if possible, to the sum of human happiness. And, my lords, if I should be called again to the like, or more severe trials; if I should be called again to suffer, in what I cannot but think the cause of men in general, the cause of human happiness; I trust, that I shall be able to bear my sufferings, not only with fortitude, but with chearfulness—with the hope, my lords, that my sufferings will not be wholly lost; but will, by the blessing of that great Being whom I serve, be rendered efficacious to the good of my fellow creatures.

Perhaps, my lords, I am out of time in mentioning, that three witnesses were omitted to be called, who would have sworn, that on the 6th of July last, George Mealmaker declared he wrote every word of this address, independent of any one else.—[Mr. Palmer mentioned the names of these three witnesses omitted.]

Lord *Eskgrove*—It is usual, in all cases of passing sentence, for the Court to give some advice to the person upon whom sentence is passed. I only wish, that you yourself may view it in the proper light that, I think, will be for your own felicity, the correcting of any errors you may have fallen into; and that all here may take example from it (which is the great end of punishment), and avoid those dangerous courses, dangerous to society, dangerous to themselves, which have brought you into the unfortunate situation in which you now stand. You will hear the sentence read.

The clerk then read the following sentence:—

The lords *Eskgrove* and *Abercromby*, in respect of the foregoing verdict; they, in terms of an act of parliament, passed in the 25th year of his majesty's reign, intituled, "An act for the more effectual transportation of felons, and other offenders, in that part of Great Britain called Scotland;" ordered and adjudged, and hereby order and adjudge, That the said Thomas Fyshe Palmer be transported beyond the seas, to such place as his majesty, with the advice of his privy council, shall declare and appoint; and that for and during the space of 'seven years' from and after this date; with certification to him, that

if, after being so transported, he shall return to, and be found at large within any part of Great Britain, without some lawful cause, during the space of seven years, being thereof lawfully convicted, he shall suffer death, as in cases of felony, without benefit of clergy, by the law of England; for which this shall be a sufficient warrant to all concerned. And farther decerned and adjudged, and hereby decern and adjudge the said Thomas Fyshe Palmer to be carried from the bar back to the Tolbooth of Perth, therein to remain till an opportunity offers of transporting him in manner above-mentioned; requiring hereby the magistrates of Perth, and keepers of their Tolbooth, to receive and retain him accordingly.

In Belsham's Memoirs of Lindsey it is stated, that "after sentence Mr. Palmer experienced very rigorous treatment. He was confined for some weeks in the common gaol of Perth; from which, without any previous notice, he was hurried away at four o'clock in the morning in the month of November, and taken on board a cutter which brought him to London; where he and Mr. Muir, a gentleman of the faculty of advocates in Scotland, who for a similar offence had been subjected to a still severer sentence, were for some time lodged in Newgate, and were afterwards confined in the Hulks at Woolwich, where they were treated by the governor with much humanity, and were allowed all the accommodations which their situation would admit. They were permitted to see their friends. Here they were visited by Mr. Lindsey and Dr. Priestley, and by many other virtuous friends of liberty and reform, who contributed by their sympathy to alleviate their sufferings, and who with others raised a very handsome subscription to provide necessaries for their voyage, and requisites to their future establishment when they had reached the place of their destination." And in a note Mr. Belsham adds "'Mr. Muir and Mr. Palmer,' says Mr. Lindsey in a letter to Dr. Toulmin dated December 14th, 1793, 'are on board 'the hulks with the felons, and many of my 'friends have been to see them. I also hear 'from Mr. Palmer, and have sent him some 'books. Neither of them, I believe, is in 'want of any thing, the place considered. 'But the situation is, upon the whole, horrible. 'Mr. Palmer, however, is most cheerful in the 'midst of it, and Mr. Muir not otherwise.' In another letter to the same friend dated January 10th, 1794, Mr Lindsey writes; 'Since I last wrote, opinions have varied 'about the destiny of Mr. Palmer and Mr. 'Muir, as the Scotch judges have, upon revisal, 'adhered to the sentence pronounced upon 'them. Mr. Palmer's health and spirits are 'most cheerful: Mr. Muir far from well in 'health since the cold weather set in: both of 'them supported by their integrity and future 'hopes. Some friends who visited the Hulks 'on Wednesday had a commission from some 'others to offer a purse to Mr. Palmer and 'Mr. Muir. The former declined taking any 'thing, but Mr. Muir thankfully accepted it.' Mr. Palmer afterwards saw reason to alter his mind, and accepted the proffered kindness of his friends. In a subsequent letter Mr. Lindsey informs his friend, 'that the amount of the 'contribution was between five and six hun-'dred pounds, and that it was vested in the 'hands of a committee of seven for the benefit 'of Messrs. Palmer, Muir, Skirving, and even 'Margarot, who as a joint sufferer, was not to 'be overlooked, though his general character 'was not so high as the others.' How true this observation of Mr. Lindsey's was, and how justly this person was entitled to participate in the bounty of Mr. Palmer's friends, those who were witnesses to his conduct to that gentleman on board the transport in the passage to New South Wales, could properly appreciate." Belsham's Memoirs of Lindsey p. 352.

The most ample (and apparently authentic) account of this person, which I have seen, was inserted in a periodical publication at the time of his death, and is as follows:—

"Mr. Palmer was descended from an ancient and respectable family, in Bedfordshire, in which county, and in Berkshire, there are now remaining several branches of the same family, possessing very considerable property. The subject of this memoir, was born at Jekwell, in the parish of Northill, Bedfordshire, it is presumed, in July 1747, as the certificate of his baptism, taken from the parish register of Northill, is dated August 16, 1747. After receiving the usual elementary instruction, under the rev. Mr. Gunning at Ely, he was sent to Eton, where he spent four or five years; and in 1765, he was entered at Queen's College, Cambridge. In 1769, he took the degree of B. A. In 1772, that of M. A. and in 1781, that of B. D. The exact time of his ordination does not appear, but he performed the duties of curate about twelve months, at Leatherhead, in Surrey. In a short time after he had taken this last degree, he became dissatisfied with the doctrines of the Church of England, and farther inquiry convinced him of the proper unity of God; and that worship was alone due to him as the unrivalled Creator. In the year 1783, he took leave of the college, and with that of his connexion with the church in which he had been educated. From Cambridge he went to Montrose, in Scotland. His motive for making choice of this particular place in preference to others, was, that there he might have an opportunity of worshipping God with a society of Unitarians, who had lately opened a chapel under the auspices of Mr. W. Christie, author of some admirable discourses on the divine Unity, which were delivered to the society, at its first establishment. To this society Mr.

Palmer attached himself, and resided at Montrose about twenty months, when he removed to Dundee, where there was also a respectable society of Unitarian Christians. At Dundee he remained several years, preaching very frequently in the neighbouring towns, and villages: and at Forfar, Edinburgh, and some other places, he delivered a series of discourses in vindication of Unitarian principles. His distinguished zeal in this cause made him enemies, who, though unwilling to raise a persecution against him on account of religion, were not displeased when his politics afforded an opportunity of injuring his character, and destroying his peace. Full ten years he exhibited an ardent and noble zeal in defence of the doctrines which he had embraced, in opposition to those which he had imbibed from early education. As a writer, on these subjects, Mr. Palmer discovered considerable talents, and no small share of biblical learning, in the few pieces which he gave to the world. Of these, one was intituled, "An attempt to refute a Sermon, by H. D. Inglis, on the Godhead of Jesus Christ, and to restore the long lost Truth of the First Commandment." This pamphlet is dedicated to the Unitarian Congregations of Edinburgh, Dundee, Forfar, Arbroath, Montrose, and Newburgh; it displays much critical acumen, and a train of strong reasoning. Mr. Palmer's other Theological tracts are, 1. An Attempt to prove the Fallen Angels to have been only the Sons of Seth. 2. An Attempt to Explain Isaiah ix. 6. 3. An Attempt to show that the Cock crowing which Peter heard, was the sound of a Trumpet. 4. An Attempt to Ascertain the meaning of μη βαλτολογησητε. 5, & 6. Attempts to Illustrate the xxivth Chapter of Matthew's Gospel, and the first ten verses of the 3d Chapter of St. John. These, together with Observations on some other writers in the same Work, are to be found in the 5th and 6th volumes of the Theological Repository, under the signature of Anglo Scotus. Such were the labours of Mr. Palmer as a Theologian and Divine. We are now to view him in another character, as a friend to the liberties of his country, in which his zeal was equally distinguished, for the sake of which his sufferings were unmerited and severe, and at length terminated his life in a foreign land. The exertions made by the friends of liberty, to obtain a reform of parliament, in all parts of this island, in the years 1792, 3 and 4, are in the recollection of every person; and the various prosecutions and persecutions which the administration of that period instituted against those who took an active part in the cause of reform will not easily be forgotten. Among those in North Britain, were the subject of this memoir, Mr. Muir, Mr. Skirving, Mr. Gerrald, and Mr. Margarot; the last-mentioned gentlemen, were active in assembling a Convention of Delegates from the several societies associated for obtaining a reform in the Commons' House of Parliament: the case of Mr. Palmer was distinct and peculiar. He was indicted and brought to trial in the month of September, 1793, for writing and publishing an Address to the People, on the subject of reform. The fact of publication was distinctly proved, but with the drawing up of the Address he had nothing to do; it was indeed, avowed by one of the witnesses for the Crown, to have been written by himself. Mr. Palmer was, however, found guilty, and sentenced to transportation beyond seas for the term of seven years. From the court, Mr. Palmer was conveyed to the Tolbooth of Perth. In this prison he lay some weeks, after which he was conveyed by sea, to the Thames, and put on board the Stanislaus hulk lying off Woolwich: while in this situation, he was part of the time in irons, but having permission to see his friends, seldom a day passed in which one or more, among whom was the writer of this article, did not visit him with a view of offering him any assistance of which he might stand in need, to alleviate the calamities incident to his situation. On the 11th of February 1794, he was taken from the hulk and put on board the Surprize transport, Patrick Campbell, master. It was not, however, till the end of April, that the fleet set sail, of which the Surprize was one. The account of his sufferings and those of Mr. Skirving, has been laid before the public [See a narrative of the sufferings of T. F. Palmer, and W. Skirving, during a voyage to New South Wales 1794, on board the Surprize transport, by T. F. Palmer, 2d. Edit. 1797.]; to that, the truth of which was authenticated by a great number of witnesses, we refer the reader, who will be shocked and astonished at the indignities and cruelties inflicted on these worthy characters, without even a pretence for the exercise of this wanton abuse of authority. On the 25th of October, they arrived at Port Jackson, New Holland, from which place he and his fellow sufferers dispatched their first letters to those friends who had interested themselves in their welfare. Mr. Muir, who, in comparison of his associates, had been kindly treated, bore an honourable testimony to the conduct of Messrs. Palmer and Skirving, and gave implict evidence to the injustice of the charges brought against them, and to the inhumanity which they experienced through the whole of their voyage. Soon after their arrival, Mr. Muir, Skirving, and Palmer delivered letters of recommendation to the governor of the colony, from persons in England of the first respectability; houses were appointed to them contiguous to each other, and Mr. Palmer wrote to his friends saying, "we have no cause to complain of any want of civility or attention." From this time they employed themselves in cultivating the land allotted to them, and the accounts given by Mr. Palmer and Skirving, were of the most favourable kind, both with respect to the climate of the country, and the fertility of the land. We

have already seen that Palmer, Muir, and Skirving, arrived at Port Jackson, in October 1794. Early in the following year, Mr. Joseph Gerrald, who had engaged in the same cause, was doomed to experience the same harsh treatment. He had been long confined in a close room in Newgate, before he embarked for New Holland; his health was completely broken, and in a very short time after he landed at Port Jackson he fell a victim to the disease of the climate. By the sentence passed on Mr. Palmer, he could not set foot in Great Britain, till the middle of September 1800, without incurring the penalty of death. The voyage, however, would take several months had it been made by the shortest and quickest route; he, therefore, with his friends began to make preparations for returning at the end of the year 1799. A ship was purchased for the purpose, the principal part of which was the property of Mr. Palmer, though captain Reed, Mr. Boston, and Mr. Ellis had a small share in her. On the 20th of January 1800, they set sail from Port Jackson, with an intention of going directly to New Zealand, to take in timber for the market at the Cape of Good Hope. The ship was in a wretched condition, and provisions were taken on board for a voyage of only six months, a period which they had fixed for their arrival at the Cape. Twenty six weeks, however, they spent at New Zealand, during which the whole of their stores were expended. Distress of the most alarming nature now compelled them to go in search of provisions; they steered for Tanga Taaboo, but there they could obtain no relief, in consequence of an existing war between the natives of this, and the neighbouring islands. From thence they resolved to call at the Feegee islands; at one of which they procured a small supply, and the favourable reception which they met with in the first instance, determined them to visit the others. By endeavouring to get to the island of Goraa they ran their crazy vessel on a reef, which carried away a large part of her keel, and in less than half an hour, she made seven feet of water; but the surf rising, they were driven off the reef into deep water. Immediately they cast anchor, and with the assistance of the natives, repaired their vessel. To them also they were indebted, not only for a supply of every necessary while in that state, but for a liberal stock to go to sea with. They now determined to proceed to Macao, in China; but meeting with contrary winds, they sailed till their provisions were exhausted, and the repairs of the ship were all opening again. In this dreadful situation, they were compelled to put into the island of Guam, though they well knew it was an enemy's port. Upon coming to anchor, January 10th, 1801, the Spanish governor, in reply to their solicitations for provisions, assured them, that unless they departed in two hours, he would detain them as prisoners of war, for to the enemies of his country he could give no support whatever. Necessity obliged them to submit to the hard terms offered them. They were immediately taken prisoners, and a guard put into their ship. Messrs. Palmer, Ellis, Boston, Reed, and Harris, sen. and jun. lived with the governor, and were treated with hospitality. During their stay here, which appears to have been a year and a half, Mr. Palmer was seized with a dysentery, a disease with which he had been perpetually afflicted, since he left England, but for which he conceived he had discovered an infallible remedy in cerated glass of antimony and ipecacuanha. In a letter to a friend in London, dated Sept. 10, 1799, he says, 'I would 'not change my residence a week, without 'these medicines. I know that I should long 'have been dead but for them. I give from '7 to 10 grains of the antimony, and alternately small doses of ipecacuanha. Oh, had 'I known of this remedy at Spithead, what 'lengthened misery, and wear and tear of 'constitution I should have escaped. Possibly Gerrald and Skirving might now have 'been alive!' Whether Mr. Palmer was now without his medicines, or what is more probable, whether the frequent attacks of the same disorder had weakened his constitution to a degree beyond the power of medicine to recruit, we have no information. He lingered under the disorder till the beginning of June 1802, when a mortification took place, which terminated his valuable life, on the second day of that month.—Monthly Mag. Vol. 17, pp. 83,—85.

To one of the editions of this trial is subjoined what is called "Mr. Palmer's defence, which he intended to have delivered, had he not employed counsel," a performance, of which, as it throws no new light upon the merits of the case, farther mention is unnecessary.

595. Proceedings before the High Court of Justiciary at Edinburgh, against ALEXANDER SCOTT, on an Indictment exhibited against him by the Lord Advocate of Scotland, charging him with Sedition, Feb. 3: 34 GEORGE III. A. D. 1794.*

Curia Justiciaria S. D. N. Regis tenta in Nova Sessionis domo de Edinburgh, tertio die Februarii, millesimo septingentesimo et nonagesimo quarto, per honorabiles viros Robertum Mac Queen de Braxfield, Dominum Justiciarium Clericum, Davidem Rae de Eskgrove, Joannem Swinton de Swinton, Dominum Gulielmum Nairne de Dunsinnan, baronetum, et Alexandrum Abercromby de Abercromby, Dominos Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

THE which day the criminal letters raised and pursued at the instance of Robert Dundas of Arniston, esq. his majesty's advocate for his majesty's interest against Alexander Scott, printer in Edinburgh, being called; which criminal letters make mention that, whereas, by the laws of this, and of every other well governed realm, sedition; as also, the wickedly and feloniously printing and circulating, or causing to be printed or circulated, any writings or speeches of a seditious import and tendency, calculated to excite the people to acts of outrage and violence, are crimes of an heinous nature, dangerous to the public peace, and severely punishable: yet true it is, and of verity, that the said Alexander Scott, above complained upon, is guilty actor, or art and part, of both and each, or one or other, of the foresaid crimes; in so far as, during the months of October, November, and December 1793, a number of seditious and evil disposed persons having, at Edinburgh, in the county of Edinburgh, assembled themselves under the designation of a general convention of the Friends of the People; and having thereafter presumptuously and seditiously assumed to themselves the name of the "British Convention of the Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments;" did, in the whole form and manner of their procedure, as well as in the principles they avowed and propagated, clearly and unequivocally demonstrate that their purposes were of the most dangerous and destructive tendency, hostile to the peace and happiness, and tending to subvert the constitution of this realm, imitating, in the form and tenor of their proceedings, the convention of France, the public and avowed enemies of this country, and with whom Great Britain then was, and still is, at war; the members of the said meetings calling each other by the name of citizen; dividing themselves into sections; receiving reports from said sections; some of which bear date "Liberty Court," "Liberty Stairs," "Liberty Hall," "first year of the British Convention, one and indivisible;" and of which some are superscribed *Vive la Convention*, and end with *ça-ira*; instituting primary societies, provincial assemblies, and departments; appointing committees of various kinds, such as, of "Organization," of "Instructions," of "Finance," and of "Secrecy;" denominating their meetings "Sittings;" "granting honours of Sittings;" making "honourable mention in their minutes of patriotic donations;" and inscribing their minutes with "the first year of the British Convention." And moreover, the members of the said seditious association, under the designations aforesaid, did, at times and places above mentioned, and particularly in a room or Masons Lodge in Blackfriars Wynd, in the city of Edinburgh aforesaid, hold various seditious and illegal meetings, wickedly and feloniously make harangues and speeches, as well as motions and resolutions, of a seditious tendency; the substance of all which was, under their authority, at least with their knowledge and approbation, not only minuted, but published in a newspaper intituled "The Edinburgh Gazetteer," and through that medium circulated among the lieges. In particular, at a meeting of the said association, upon the 25th day of the said month of November, or upon one or other of the days of that month, or of the months aforesaid, one of the members of the said meeting, having, at the place foresaid, made the following motion, or one of a similar tendency, viz. "That in case the minister, or any other member of either House of Parliament, bring forward a motion for leave to bring in a convention bill, such as has passed in Ireland, to prevent the people from meeting according to their just rights by the Revolution, the same motion shall be notice to the delegates to meet in convention, to assert their rights;" the said motion was made the subject of discussion in the said meeting, within the room or Masons Lodge aforesaid, upon the 27th day of the said month of November, or on some one or other of the days of the months afore-

* From the records of justiciary.

said, when Charles Sinclair, a member of said convention, did propose sundry amendments thereto, of a wicked and seditious tendency; and the said motion, with the amendments thereupon proposed by him or others, having been, by the said meeting, referred to the said Charles Sinclair, and some others of the members of the said meeting, as a committee to draw up a motion from the whole, the said Charles Sinclair did, upon the 28th day of the said month of Novemvember, or on one or other of the days of that month, or of the months aforesaid, within the room or Masons Lodge aforesaid, read to the said illegal meeting, when there assembled, the amendments upon the foresaid motion, as agreed upon by him and the said committee, when the said illegal and seditious meeting did wickedly and feloniously, then and there, solemnly and unanimously come to a resolution of the following import or tenor:

"That this convention, considering the calamitous consequences of any act of the legislature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our known and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country; and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people, and annual election, until compelled to desist by superior force.

"And we do resolve,

"That the first notice given for the introduction of a convention bill, or any bill of a similar tendency to that passed in Ireland, in the last session of their parliament;

"Or any bill for the suspension of the Habeas Corpus act, or the act for preventing wrongous imprisonment, and against undue delays in trials in North Britain;

"Or in case of an invasion;

"Or the admission of any foreign troops whatsoever into Great Britain or Ireland; all, or any one, of these calamitous circumstances, shall be a signal to the different delegates to repair to such place as the secret committee of this convention shall appoint; and the first seven members shall have power to declare the sittings permanent; and twenty-one shall constitute a convention, and proceed to business.

"The convention doth therefore resolve, that each delegate, immediately on his return home, do convene his constituents, and explain to them the necessity of electing a delegate, or delegates, and of establishing a fund without delay, against any of these emergencies, for his or their expense; and that they do instruct the said delegate or delegates, to hold themselves ready to depart at one hour's warning."

And further, at the same time, and within the same place, after the foresaid resolution had been so made, a motion was made in the said meeting, in the following words, or in words of a similar import and tendency: "That a secret committee of three and the secretary be appointed to determine the place where such convention of emergency shall meet: that such place shall remain a secret with them and with the secretary of this convention: and that each delegate shall, at the breaking up of the present session, be entrusted with a sealed letter, containing the name of the place of meeting: this letter shall be delivered unopened to his constituents; the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state, until the period shall arrive at which it shall be deemed necessary for the delegate to set off:" The said meeting did wickedly and seditiously unanimously approve of the said motion. And at a subsequent meeting, upon the 4th day of December, or upon one or other of the days of that month or upon one or other of the days of the months aforesaid, and within the said room or Masons Lodge aforesaid, it having been moved by one of the members then present, "that the moment of any illegal dispersion of the present convention shall be considered as a summons to the delegates to repair to the place of meeting appointed for the convention of emergency by the secret committee; and that the secret committee be instructed to proceed without delay to fix the place of meeting;" the said meeting did unanimously resolve the same, and appointed the secret committee to proceed as desired. All which motions and resolutions, together with many others of an equally seditious tendency, the said Alexander Scott, who was then a member of the said association, did at times and place aforesaid, wickedly and feloniously approve of and concur in, and took besides an active part in all their proceedings, and was frequently named, and acted as a member of their committees: in particular, the said Alexander Scott did, at times and place aforesaid, wickedly and feloniously make a motion of the following import and tendency: "That before any delegate from the country shall leave his post, he shall write to his constituents to send another up in his room;" and which motion was unanimously agreed to. And, upon Thursday, the 5th of December, 1793, or upon one or other of the days of that month, the provost and magistrates of Edinburgh having repaired to the foresaid room or Masons Lodge, in Blackfriar's Wynd of Edinburgh, where the said illegal association or convention was assembled, in order to disperse the same; they were then and there

resisted, and obliged, by the said association, to use force to compel the members to leave the room; and who did immediately repair to a house or room in the Flesh-market Close of Canongate of Edinburgh, where they, notwithstanding their recent dispersion, did, in contempt and defiance of the civil magistrate, declare their meetings permanent. And the said association, or convention, having agreed to meet on the day following, in a room or work-shop in Lady Lawson's yard, on the south side of the street called the Crosscauseway, in the parish of St. Cuthbert's, and shire of Edinburgh, belonging to John Laing, wright, at which meeting the said Alexander Scott was present; the sheriff substitute of the county of Edinburgh was obliged to use a similar mode of compulsion before the meeting would disperse. Further, the said Alexander Scott did, at Edinburgh, in the county of Edinburgh, on the 26th day of November 1793, and on the 3d and 10th days of December of the said year, or on one or other of the days of the said months, wickedly and feloniously print and circulate, or cause to be printed and circulated, three numbers of a paper, intituled, "The Edinburgh Gazetteer," being Nos. 78, 79, and 80, and bearing the respective dates aforesaid, viz. the 26th November, 3d and 10th of December 1793; and all of which numbers of papers aforesaid, bore respectively, "Edinburgh, printed by A. Scott, Gazetteer office, South Bridge, to whom commissions are requested to be addressed;" and which papers contained a variety of seditious and inflammatory speeches, motions, and resolutions, said to have been spoken, proposed, and passed, in the foresaid meeting, styling itself "the British Convention of Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments." Thus, in the paper aforesaid, No. 78, and bearing date the 26th day of November, 1793, where an account is given of a debate in the seditious meeting, relative to a union with similar associations in England: it is said, "Englishmen and Scotchmen has declared for universal suffrage and annual parliaments: for to obtain these objects they have united; they will proceed until they are secured, or yield the pursuit only with their lives." Afterwards, it is said, "Much of late has been said about meetings of mobs: I apprehend that no meeting of the people can be called a mob, if their deliberations be directed towards the public good; but if men meet for an opposite purpose, for promoting the misery or the destruction of the human race, though they should sit with crowns on their heads and sceptres in their hands, they are truly a mob."—Also, "It may occur, that the voice of the people will be wrong, when their understandings are perverted by priestcraft, or darkened by political superstition, like the voice once heard in Jerusalem, of Crucify him, Crucify him! when that nefarious deed was perpetrated, at which the sun hid his head in darkness and in blood. But were the tyrants of the earth as solicitous to enlighten as they are to punish those unfortunate subjects; were governments to instruct the poor, instead of hanging up their bodies on gibbets, the voice of the people would then be the voice of God." Further, in a paper aforesaid, No. 79, of date the 3d of December 1793, after mentioning the above motion, relative to the minister's bringing into parliament such a a convention bill as passed in Ireland, the following passage occurs:

"M. *Margarot*.—This is an excellent motion, and the event which it alludes to, ought to be the *tocsin* to the friends of liberty to assemble." Afterwards, in the account given of the debate in the said British convention relative to the foresaid motion, the following passage occurs:

"Though I could not get a copy of this bill, the heads, of which I have read, are sufficiently explanatory of its detestable principles; and I hope the measure which has passed this night will convince the minister, that we are determined to guard against every attempt that may be made to deprive us of our rights; and though by some it may be thought a bold, by some a daring measure, yet it will be found the best for securing the peace of our country; for if such a law were suffered to pass, if men were not allowed to utter their complaints, a number of fierce and rancorous passions would arise, and we would seek to appeal to that last terrible decision, the event of which is uncertain, but which God and nature allows.

"If the servility of the people had been less; if they had dared to meet, and in place of murmuring, to have told their rulers that there was danger in seeking to deprive them of their liberties, we would not have had to adopt this resolution to night; but when I saw the calm, deliberate countenances of all present, and the solemn manner in which it was passed, I was convinced that it would not only be a resolution of words, but a rule of action."

Further, in the paper aforesaid, No. 80, and of date the 10th day of December 1793, the following passages occur:

"We have already appointed a secret committee, for fixing a place of meeting on certain emergencies, and we ought to be equally well provided against the present case; for if we shall happen to be dispersed to night, how or where are we to rally again?—To do this your committee suggests a resolution to the following effect, but which I shall leave to be drawn up by the council of the table: that the moment of our illegal dispersion shall be considered as a summons to every delegate to repair to the place appointed by the secret committee in cases of emergency.

"And all grasping and domineering aristocratic influence pervades and overspreads the kingdom, and by threats and promises endeavours to terrify or seduce the people

from the assertion of their rights, and from exerting that native energy which appertains to them.

"Let not, however, the officers of government be objects of your indignation. If they really knew how they were degraded as moral beings, by the service on which they are frequently sent, they would not feel much respect for those who employ them. Let these men, then, be the objects of our pity and instruction. Though they are sent to disturb us, not one of them, I will affirm, has ever been informed of the supposed offence which we are now committing."

Further, in the aforesaid paper, No. 80, of date aforesaid, there is an article intituled, "An extraordinary instance of public spitit in a cobler of Messina;" which article is obviously calculated to convey to the lieges of this country a doctrine of the most horrible and diabolical tendency; to hold forth, under the form of a moral tale, that massacre and assassination are justifiable, nay, are acts of of public virtue. It is prefaced thus: "There is a sort of enthusiasm in public spirit, which renders it politically prudent in corrupt statesmen to discourage it; and yet there is something so great and so divine in this enthusiasm, that statesmen of a better turn, though they dare not encourage, yet they cannot but admire it.—We have a shining and surprising example of this in the cobler of Messina, which happened in the last century, and is at once a proof, that public spirit is the growth of every degree; and which is a point that our great men ought to consider with attention, that wherever corruption becomes flagrant and universal, this heroic lunacy of public spirit is most likely to appear." And concludes thus: "So I think it would be happy for the ministers, who are either entrusted by their masters, or acquire to themselves a boundless authority, supported by boundless influence, if they would write in a table book, and from thence refresh their memories frequently with this sentence, 'What if the cobler of Messina should revive," Thereby clearly signifying, that the foresaid wicked and nefarious principle ought to be put in practice here; or at least holding out a threat to those who are in public offices, in order to deter them from a due exercise of their duty, and thereby exciting the wicked and seditious to perpetrate acts of such enormity. And the said Alexander Scott, above complained upon, having, on the 5th day of December 1793, been brought before Harry Davidson, esq. sheriff-substitute of the county of Edinburgh, did in his presence emit and sign a declaration, tending to show his guilt in the premises. Which declaration, together with five half sheets and three full sheets of paper in manuscript, found in the printing-office of the said Alexander Scott; as also, four copies of the Edinburgh Gazetter, being No.'s 78, 79, 80, and 81; as also, the scroll or draught of the minutes of the said general convention, from 29th of October to the 4th day of December 1793, consisting of 95 pages, and found in the custody of William Skirving, secretary to the said convention, when apprehended by warrant of the sheriff of Edinburgh in the month of December last, being No. 1 of the inventory of papers found in the said William Skirving's possession, and made up in presence of the sheriff of Edinburgh upon the 5th of December last, with the said inventory itself, and whole of the other papers and writings therein contained; as also, two lists or inventories, made up before the sheriff of Edinburgh on the 7th of December last, of sundry papers found in the possession of Joseph Gerrald and Maurice Margarot, two members of the said convention, when apprehended in consequence of a warrant from the sheriff of Edinburgh; one of which inventories, consisting of ten articles, subscribed by William Scott, procurator-fiscal of the county of Edinburgh, and the said Joseph Gerrald; and the other, consisting of nine articles, subscribed by the said William Scott and the sheriff-substitute, together with the whole articles mentioned in the said two inventories, excepting No. 1; and also, an inventory of sundry papers found in the custody of Charles Sinclair, one of the members of the said convention, and made up in presence of the sheriff of Edinburgh upon the 7th day of December 1793, consisting of 21 articles, with the whole of the said 21 articles themselves; as also, a letter signed Alexander Scott, dated "Gazetteer office, Monday, 9th December, 1793," and addressed to "the right honourable the lord advocate of Scotland;" will all be used in evidence against the said Alexander Scott; and will for that purpose be lodged in the hands of the clerk of the high court of justiciary, before which he is to be tried, that he may have an opportunity of seeing the same. At least, times and places above mentioned, the said acts of sedition were committed; the said speeches, motions, resolutions, and article, printed and circulated in manner foresaid; and the said Alexander Scott, above complained on, is guilty actor, or art and part, of all and each, or one or other, of the said crimes. All which, or part thereof, being found proven by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary to be holden by them, within the criminal court-house of Edinburgh, upon the third day of February next to come, the said Alexander Scott, above complained upon, ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming. And the said Alexander Scott being ofttimes called in court, and three times at the door of the court-house he failed to appear.

Whereupon his majesty's advocate moved that sentence of out-lawry and fugitation, might be pronounced against the said Alex-

ander Scott, and that as he understood bail had been given for his appearance when he was apprehended by the sheriff—he moved that the bond might be forfeited, and the penalty recovered.

The lord justice clerk, and lords commissioners of justiciary, decern and adjudge the said Alexander Scott, to be an outlaw and fugitive from his majesty's laws, and ordain him to be put to his highnesses horn, and all his moveable goods and gear to be escheat, and inbrought to his majesty's use, for his contempt and disobedience in not appearing this day and place, in the hour of cause, to have underlyn the law for the crime of sedition, as specified in the said criminal letters, as he who was lawfully cited to that effect, ofttimes called in court, and three times at the door of the court-house, and failing to appear as said is. And farther, the said lords declare the bond of caution granted for the appearance of the said Alexander Scott to be forfeited; and ordain the penalty therein contained, to be recovered by the clerk of this court, to be disposed of as the court shall direct.

(Signed) ROBERT M'QUEEN, I. P. D.

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596. Proceedings on the Trial of WILLIAM SKIRVING, on an Indictment charging him with Sedition. Tried before the High Court of Justiciary at Edinburgh on the 6th and 7th of January: 34 GEORGE III. A. D. 1794.

By the right honourable Robert Dundas, now [1817] lord chief baron of the court of exchequer of Scotland, who, when the proceedings against Skirving and his associates were instituted, held the office of his majesty's advocate, I have been favoured with an exact copy of the minutes of that assembly which had first called itself The General Convention of the Friends of the People, and which afterwards took the name of the British Convention of the Delegates of the People associated to obtain Universal Suffrage and Annual Parliaments. These minutes were received as evidence on this and the following trials, and I here insert them at full length.

[*N. B. Whatever is erased in the original is here printed within brackets* [ ]—*words underscored in the same are printed in italics*].

GENERAL CONVENTION.

Edinburgh, 29th October, 1793.

MR. JOHN M'Intyre being called to the chair, the following commissions were given in, read, and found valid, viz.

From the Potterrow Society in favour of Messrs. Adam Pringle, John Clark, James Bell, Thomas Noble, James Paterson, Randolph Slack, Thomas Bell, George Turner, James Dun, Geo. [Innes] Cotton, P., James Purvis, treas., Jas. Tod, sec., Jas. Bell, Jo. Gilchrist, Thos. Watson.

New Town.—John Milne, P., John Laidlaw, S.

Cowgate.—Alexander Reid, Charles Salter, Isaac Salter, George Callum, William M'Cubbin, John M'Intyre, John Laing.

Canongate, No. 3.—David [Laing] Taylor, Wm. Robertson.

Dundee Friends of the Constitution.—Rev. Mr. James Donaldson.

Dundee Friends of Liberty.—George Mealmaker.

Dundee Friends of the Constitution.—Rev. Mr. Neil Douglas

New Milns.—James Campbell of New Mills.

New Town.—David Bertie, John Auchinlech, John Muir, John Noble, John M'Arthur, Alexander Knox, Archd. Gray, John Graham, James Bonrdon, Wm. Urquhart, John Hodge, Alexr. Bremner, Andw. Newton.

Glasgow Friends of the People.—[James Seton] Robert Peacock, John Stark, Jas. Gartley, [Eben. Millar] John Gartley, [John Sinclair] Hinchelwood, Walter Hart, William Millar, Jas. Little.

Gorbals.—Geo. Millar.

Dunfermline.—James Boyd, John Morris, John Philip.

Strathaven.—John Mitchell.

Paisley.—[John M'Intyre] Taylor, [James Mitchell] Archd. Hastie.

Portsburgh.—[right hon. lord Daer] Messrs. Peter Hardie, James Richmond, [John Smith] Taylor, James Tweedie, Joseph Smeal, John Dickson, John Richmond, Adam Richmond, Wm. Skirving, esq., Peter Wood, John Thomson, Geo. Anderson, James Smeall, Fredk. Milne, William Moffat.

United Societies of Kirkaldy and Linkton.—William Todd, James Hally, Henry Rait.

Linlithgow.—Adam Dawson, Willm. Marshall, Wm. Hinshelwood.

Canongate. No. 1 and 2.—Alexander Bell, John Buchanan, Alexr. Fortune, [John] James Somervai, [Geo. Ross,] Alexr. Aitchison, Arch. Wright, Alexr. Callander, [esq.] Richd. Younger, John Wardlaw, William

Simpson, John Johnston, Thomas Kennedy.

Water of Leith.—Arthur M'Ewan, Robert Orrock, Willm. Farquharson, Wm. Gosford.

Perth.—[John Whytock], [Robert Angus], Robert Sands.

Linton, East Lothian.—John Hepburn, P. Geo. Mylne, Andw. Taylor, sec.

Operative Society Edinburgh.—John Hyme, Gordon Murray, Thos. Miller, John Baillie, Alexr. Cockburn, Willm. Johnston.

Hamilton.—John M'Laren.

Bridge Street. — Archd. Binny, Mitchell Young, Alexr. Scott, Andw. Simpson, David Downie, John Inglis, Alexr. M'Kenzie, James Carmichael, John Kirk, James Ferguson, James Wilkie, David Lyon, Geo. Cleland, Wm. Fleming, Jas. Foyar, Willm. Eelbeck, Wm. Ross, Ebenr. Stalker.

Laurieston.—David Weir, John Dunn, John Braidwood, David Gowans.

Lawn Market Edinburgh.—Thomas Cockburn, James Lawson, Charles Ritchie, John Grindlay, John Wilson, John Wyld, Wm. Romanus, Saml. Paterson, J. Thomson, John Gourlay, and M Burn.

Dalkeith.—Peter Leyden, James Mutter, Thos. Taylor, Wm. Watson.

Calton.—Robert Christie, William Philip, James Smith, William Brodie, Peter Hunter, William Boyd.

Kilmarnock. — John Ronaldson, Thomas Boyd of Caprickhill, Willm. Muir, Jas. Cunningham.

Auchterderran.—John Todd, John Chalmers.

Kirkintulloch.—William Hay.

Pennycuick.—David Brown, James Smith, Robert Smith, John Jackson.

Lennox Town.—John Brown.

Pathhead.—John [Hablow] Halley, Robert Rait.

Additional Delegations.

Shotts.—[James] William Martin of Moorhall.

[Additional Delegations].

Wigton.—Lord Daer.

Crown and Anchor London.—Charles Sinclair, Henry York.

London Corresponding Society. — Joseph Gerrald, Maurice Margarott.

Sheffield Constitutional S. — Matthews Campbell Brown.

Glasgow United Scotsmen.—Robert Peacock, John Stark.

Miltown of Campsie.—Dugald Murray.

Mid Calder.—Thomas Tweedale.

Whitburn.—George Waddell.

Tradestown.—John Gartley.

Canongate, No. 1 and 2.—William Campbell, George Malcolm.

Newton.—(apology signed I. M.)

Montrose.—Colin Norrie.

Canongate, No. 8.—James M'Kay, [Walter] Peter Moffat, Alex. Plenderleith.

Broughton. — Willm. Bonthron, Josiah More, John Fairley.

Mr. Purvis paid to the general fund from the Potter-row society 1*l.* 1*s.*

The president having constituted the meeting by prayer, was continued in the chair unanimously.

A letter was read from Messrs James Bishop and Alexander Dove, president and sectry. of the society at Johnstone, containing their sentiments on public reform, with an apology for not sending delegates, and concluding with a very just complt. to Thomas Muir, esq.

A similar letter of apology was read from Woodstow, and another from Mr. Thomas Watt at Dunbar.

The secretary also read a letter from Mr. John Chalmers, secy. to a provincial convention held the 15th currt. at the New Inn in Fife, containing the resolutions of that meeting, respecting a committee of correspondence, an address to his majesty to dismiss the present ministry and put an end to the war, &c.

Mr. Callender moved that the house should be purged of strangers.—Mr. Binny moved that a particular part of the house be allotted for visitors, who should be admitted upon paying one shilling each. At last it was resolved that all present should go as near the door as possible, and each delegate answer to his name in the order of the roll.—After which it was resolved that as the house was [abundantly rather too] rather too small for the delegates, none else should be admitted.

Messrs. Alex. Lamond, David Leckie from Musselburgh, Mr. Williams from Manchester, Mr. Hunter [from] and Mr. Yetts were allowed to continue as visitors, and it was resolved that no visitors should in future be admitted without giving in their names to the chair.

A letter was presented and read from Mr. Stephen Gibson of the Linlithgow Society, respecting the objects of the association.

1st Motion.—A motion was presented and read from Mr. William Philp, that "this convention adopt some measures for instructing the people at large in the nature, principles, and glorious properties of the British constitution."—Ordered to lie on the table.

Letter and commission read from Lennoxtown Campsie, signed by Mr. D. M'Nab, sect.

Mr. Callender moved that this convention resolve to claim for themselves and their constituents the right of universal suffrage and annual parliaments.

A letter from a gentleman who does not wish his name to be mentioned was afterwards read, which the secy. had received, accompanying a work in *MS.* entitled "Review of the Constitution and Government of Great Britain," and dedicated to this general convention.

Mr. Downie moved to change the general title of the associations. Ordered to lie on the table.

An anonymous letter was afterwards read, which the secretary had received, covering a guinea note of the Thistle bank.

A motion was made by Mr. Archd. Wright, that the convention shall each night adjourn before 10 o'clock. Agreed to, if possible.

A letter was read from the four united societies of Ireland.

Mr. Bell moved an address and declaration of principles. Ordered to lie over.

Mr. Laing made a similar motion, which was also ordered to lie on the table.

Adjourned at a quarter past four, till six o'clock in the evening.

Eodem die.—Evening sitting.—The Rev. Mr. Jas. Donaldson in the chair.

The minutes being read, a motion was presented and read from Mr. James Mitchell, of Paisley, that a petition be presented to his majesty to put an end to this ruinous and destructive war.

Mr. Skirving moved, that a committee be appointed to consider the apologies made for absence and report; and the following committee were appointed:—Messrs. Buchanan, Hinchelman, with the president and secretary, and Mr. Clark.

The following gentlemen were admitted visitors, Mr. Samuel Brown, from Virginia; Mr. Reid, Mr. Heron (recommended by T. Muir, esq.), Mr. David Ritchie, Mr. Walter Davidson, John Bennet, Gavin Malcolm, and George Malcolm.

Mr. Skirving presented and read a copy of a letter wrote in name of the general committee, and signed by Mr. Callander and himself to the lord provost, with [the] his lordship's answer. After which he moved, that a committee be appointed to consider of the answer.

Mr. Buchanan and the Rev. Mr. Douglas thought it merited no reply, not being signed. After some conversation the affair was remitted to the same committee, to consider the lord provost's answer and report to the convention.

Mr. Skirving read the thanks of the general meeting of the Friends of the People at Freemasons' Tavern, dated London, dated London. May, 1793, as returned by them to the convention of delegates at Edinburgh, for their zeal and activity in the cause of parliamentary reform.

He also read a similar letter from Mr. Thomas Hardy, dated London, 5th October, 1793, and another dated London, 25th October, 1793, respecting the appointment of Messrs. Margarot and Gerrald.

Mr. Skirving next read a letter from Mr. D. Stuart, secretary to the association at London, dated Frith-street, No. 7. October 16, 1793.

Mr. Binny read a letter from the const. society at Sheffield, dated 27th May, 1793, and signed Willm. Camade, secry. upon the objects of reform in general [and particularly recommending the periodical work entitled [the Patriot, and containing many judicious [observations], (containing some humorous remarks on the arguments [of] advanced by the enemies of reform, which were received with great approbation.

Mr. Skirving next read the printed paper, contained in the said letter [entitled] addressed to the unemployed artizans, &c. of Manchester, and containing a number of excellent remarks upon the calamities of war, signed "Sidney."

Mr. Clark moved that a deputation be sent this night to wait on Mr. Muir. Messrs. Douglas, Wright, and Clark were appointed accordingly, and Mr. Douglas moved, that a [consoloter] congratulatory letter be sent to Mr. Muir, in name of the convention, which was agreed to, and Messrs. Douglas and the president were appointed a committee accordingly.

Mr. Wright moved, that two members be appointed to dine with Mr. Muir every day while the convention sits, at the expense of the convention, which was unanimously agreed to.

The depute secretary read a letter from Henry Shipley, esq, secretary to the Nottingham delegates, with a copy of the printed resolutions of their 7th delegated meeting, signed by presd. and H. Shipley, secy. and Mr. Skirving read a copy of his answer.

The Rev. Mr. Douglas moved that the Nottingham resolutions should be reprinted, with such remarks as might be judged proper, at the expence of the convention, and circulated. Mr. Newton moved some amendment. Mr. John M'Intyre also objected to the republication. Messrs. Philips, Aitchison, Wright, Boyd, and several other speakers supported the motion, whereupon the motion was agreed to, and the following committee was appointed:—

Messrs. Douglas, Donaldson, from Dundee.—Sands, from Perth.—Hart, from Glasgow.—Chalmers, from Fife.—Boyd, from Dumfermline.—Boyd, from Kilmarnock.—Mitchell, from Paisley.—Messrs. Skirving, Buchanan, Callender, Binny, Clark, Edinburgh.—Millar, from Gorbals, and Mr. Hepburn, from E. Linton.

Mr. Skirving moved that a [committee] collection be immediately made for defraying charges, and repeated at every meeting of the convention, which was unanimously agreed to, and Messrs. Buchanan and Binny being appointed collectors, there was collected 2*l.* 6*s.* 6*d*½. which was delivered to Mr. Skirving, in absence of the treasurer.

Mr. Skirving next read a letter from the delegate meeting of the constitutional society at Leeds, dated 24th May, 1793, and signed by Mr. Charles Hundley, together with a printed copy of their [resolutions] address, declaration, and resolutions, signed by Messrs. Jos. Firth and Joseph Nutter, presd. and secy.

[Mr. Geo. Ross announced that the soldiers [were under arms, and that patroles were [[on] abroad in the [streets.] And Mr. Ross moved that the lord provost and magistrates should be invited to attend our deliberations to-morrow.

Mr. John Chalmers moved to present a petition to his majesty, to fall upon some expedient for obtaining a general convention of the whole nation, to consider the grievances of the people.

Mr. Alexander Bremner moved that this convention draw up a few leading features of our grievances, such as corporation laws, test [law] acts, patronage, &c. which are all inimical to the natural rights and liberties of man, &c.

Mr. John Sinclair moved that a subscription be set on foot for the benefit of Mr. Muir. All these motions were ordered to lie on the table.

The secy. read a letter from colonel M'Leod, dated 11th May, with a copy of his answer. Whereupon Mr. Callender moved that a deputation be appointed to wait upon colonel M'Leod, to see if he stood to his principles. Mr. Callender, the rev. Mr. Douglas, Mr. Newton, and Mr. Clark were accordingly appointed to wait on the colonel.

Mr. Alexander Scott moved, that every other gentleman in the same predicament ought to be waited upon, and their reasons for absenting themselves inquired into, and particularly lord Daer. Mr. Skirving vindicated lord Daer, but Mr. George Ross seconded Mr. Scott's motion, and insisted that it should be also extended to Mr. Hugh Bell.

Upon further arguing, it was agreed to postpone [all] these motions till to-morrow.

All the committees were appointed to meet to-morrow at 10 o'clock, and the general meeting was [adjourned till] appointed to meet to-morrow at eleven.—Mr. Callender's motion to be first discussed.

Mr. Skirving read a paper, presented by Mr. Thomas Noble, setting forth, in his own name, and that of the Potter-row Society, the necessity of applying for universal suffrage and annual elections to the King, and not to the Parliament.

Mr. Clark [brought] gave in a verbal report [of] from the committee appointed to wait on Mr. Muir, that they were very [gra-[ciously] cordially received, and that it was his wish, that if this convention wished it, six could [wait] dine with him, but that it would be necessary to apply to the magistrates, which, after some reasoning to, was agreed to, inquire first into the fact—be done to-morrow.

The rev. Mr. Donaldson, the chairman, afterwards closed the meeting by a prayer, very well suited to the occasion, as well as to the times and circumstances; after which the convention was adjourned till to-morrow at eleven.

The convention appointed the committee of instruction to arrange the various motions, and report to-morrow morning.

The following entries were written on a separate paper, and marked on the back No. 2, and is partly another minute of the preceding:—

Minutes taken in the Convention of the Friends of the People, which commenced their sittings on the 29th of October, 1793.

Mason-lodge Room, Edinburgh,
29 Oct. 1793.

A great number of persons being assembled here at noon, conformably to a call by public advertisement, Mr. Skirving, the secretary to the general convention of the Friends of the People, rose and said, That he found it his duty, as being the only office-bearer at present in the association, to open that respectable meeting; that he presumed, all present had now assembled from approbation of the advertisement in the newspapers, and transmitted also by circular letters, a copy which he held in his hand, and which he begged leave of the assembly now to read to them.

Having read the public advertisement, he requested some token that they were met in compliance with the call of the same. Upon this, all present took off their hats. He then moved, that one of the members present be called to the chair, to preside until the convention was regularly ascertained and confirmed. This motion being approved, he stated, that as the last convention had entrusted the general committee of the association in Edinburgh with the orderly meeting of this present convention, he was authorized to propose M'Intyre, A. M. to their choice, as president, during the opening of this present convention, and he was unanimously called to the chair.

M'Intyre in the chair.

The commissions from the various societies to the delegates sent up to this convention, were ordered to be laid on the table, and the same were all read, and the names of the delegates, duly authorized, entered upon the roll.—The roll, containing the names of one hundred and fifty-three delegates, being called over, and no objections to it offered, the convention was declared duly assembled; and the president, upon a recommendation of the societies in Edinburgh, and which was heartily embraced by all present, rose, and in the name of the whole, returned thanks to God for this other opportunity of assembling, to assert and claim their rights and liberties; and supplicated his countenance, protection, and blessing, on this convention.

It was moved, in conformity to the rules of the convention, that a president be chosen for the first sitting [of the convention], and the present chairman was continued, by the unanimous voice of the convention.

1st Sitting of the Convention.—M'Intyre in the chair.

Letters from several societies were read, which contained apologies for not sending up delegates to this convention, though they heartily approved of the meeting, and prayed for its success. Several of these letters were from societies in England, and expressed their sorrow that the intimation had not reached them in time to send delegates from so great a distance; but assuring the convention of the earnest desire of all there to co-operate with them in the firmest union of sentiment and will. The secretary of the society of the Friends of the People in London informed, that a general meeting could not at that time be called, but that some of its members would attend the convention; and that whatever they did, would certainly be approven by their society.

The secretary of the Corresponding Society in London informed, that their society had met and chosen delegates, as had also the Constitutional Society; and that others in England might be expected to do the same.

Addresses from societies in different places of Britain and Ireland, and from individuals, were also read, congratulating the convention, and earnestly requesting, in particular, their speedy resolution concerning universal suffrage and annual elections.

A book in manuscript, entitled, "A Review of the Constitution and Government of Great Britain," and dedicated by the author to the convention, was presented by the secretary, together with an excellent letter from the author; as also an anonymous letter, covering a guinea note of the Thistle bank.

After arranging some internal matters, the convention, with a view to proceed to the business for which they had assembled, called on all those who had motions to propose relative to the same, that they would give them in to the table of the convention in writing.

At half past four o'clock, the convention adjourned till six in the evening, and concluded with prayer.

2d Sitting.

The convention met, conform to adjournment, and unanimously voted the rev. J. Donaldson to the chair.

James Donaldson in the chair.—The meeting was constituted by prayer.

The minutes being read, a number of motions were laid on the table in writing.

The remaining letters and addresses from societies, &c. were read, and received with much satisfaction.

Upon the motion of several members, a deputation was appointed to wait on Mr. Muir immediately, to express the sentiments of the convention, relative to his present sufferings in their common cause; and a committee was moreover appointed to draw up a scroll of a congratulatory letter to him, that the same might be approven by the convention and transmitted. It was also resolved, that another be drawn up, to be transmitted to the rev. Mr. Palmer. It was furthermore resolved, that six members, if allowed by the magistrates, should dine with Mr. Muir every day, during the sitting of the convention; and the convention furthermore appointed, that a public subscription should be opened, for defraying the expense which these gentlemen are put to, because of their steady adherence to the cause of the whole

A committee was then appointed, for the purpose of selecting and publishing such parts of the excellent addresses and communications now and formerly read to the convention, and particularly the printed resolutions of the Nottingham Delegated Society, as were calculated for public benefit It was also resolved, that a [subscription] collection for defraying the expense of the same, and of the meetings, should be made in the convention every evening sitting.

The above mentioned committee of instruction, was appointed to meet at 10 o'clock next morning, and to arrange and class the several motions on the table, previous to the sitting of the convention which was appointed to be held at 11 o'clock. But it was agreed that the following motion by Mr. Callender, and recommended by the greater part of the societies should have the priority, in the order of the business before the House.

After the discussion of some occasional matters, the meeting was adjourned with prayer.

3d. Sitting of the Convention.—The Rev. Mr. Neil Douglas was called to the chair.

N. Douglas in the chair.

After prayer, Mr. Scott reported the inner turnkey of the Tolbooth, had strict orders from the city magistrates, that he should not admit more than two persons at one time to visit Mr. Muir, and moved that therefore more than two need not be sent to dine with him.

After reading the minutes, it was suggested by a member, that the collections could not be expected to do more than defray necessary expences, and that therefore, a subscription should be opened for defraying the expences of the committee of public instruction. This motion was approven.

A number of motions were now read and ordered to be classed with general motions, to which they chiefly referred; and the House agreeably to former resolutions, agreed to go into the consideration of the motion for universal suffrage, and annual delegation to parliament, as motioned by Alex. Callender and others.

Mr. Callender, after reading the several motions and opinions of societies, on the resolution proposed by him, rose and urged at considerable length the adoption of his motion.

The time of the sitting being far spent, and the subject of great importance, while some of the members were just then called away on the business of the convention, it was agreed that the further consideration of this motion be deferred till the evening sitting, and that the same be wholly devoted to the discussion of it.

A motion for changing the title of the convention was introduced and supported, but objections being offered by several members, the discussion gave place to sundry motions relative to publications, and after some consideration it was resolved, that the whole be referred to a committee to be afterwards appointed for drawing up a public address to the nation.

A number of copies of the proceedings of the friends to the liberty of the press in London, were presented by A. Scott, and distributed gratis.

After prayer adjourned till 6 o'clock in the evening.

4th Sitting of the Convention.—Niel Douglas in the chair.

After prayers the convention proceeded to the further consideration of the motions, &c. on the table relative to the explicit construction to be put on the two original resolutions of the association, namely, "A more equal Representation of the People in the Commons House of Parliament, and a shorter Duration of Parliamentary Delegation;" and it was proposed that although there could, and evidently would be, but one sentiment in the House that the explicit meaning of the first resolution was *universal suffrage*, and of the second, *annual elections*, and that nothing short of these two could be adequate in the present universally corrupt state of the nation, for attaining the radical reform sought by all wise men, and that, therefore, the speeches would all be on the same side of the question, yet the vote, upon the motion before the house, should not be put suddenly, but the members should be permitted, and even requested to declare their opinion *seriatim* upon a point of so great magnitude, and that the vote should thereafter be solemnly put.

A very full discussion accordingly ensued, in which, not only the natural right of all to elect their representatives and governors was clearly illustrated, but also the actual possession of this right, and the right of calling to account, and even cashiering their governors was shown to have been possessed by all freemen in Briton, in the original parliaments of the nation which were denominated Folkemotte. The necessity of following up the principle to the fullest extent, was also clearly established, on the principle of expediency, as well as of justice; and it was likewise demonstrated, that the fears of riot and tumult at popular elections, which opposition to the measure held furth as bughbears to deter from making the attempt were unfounded, and that all such uproars at popular elections were the work of party spirit and bribery, which by the reform desired, would be all removed with the causes which produced them.

The members having spoken fully on question, it was proposed, for the purpose of expressing the resolution of the convention in the most explicit terms, that the motion should be passed in the words of the duke of Richmond on these points, namely,

Which being allowed, the question was accordingly stated *approve or not*, when the roll being called, and every member present having voted, it carried nem. con. Approve. Whereupon all present rose, and *joining hands* congratulated each other on the resolution of so important a point, and that with such entire unanimity.

The secretary thereafter, read a letter which had been just then sent in to him, to inform the convention of a most barbarous outrage committed by William Binny the inner jailor, on two gentlemen who had gone up that evening to call on Mr. Muir, one of the gentlemen who had escaped without much hurt, being present, gave a particular account of the affair, and the convention requested solicitor Moffat to commence immediately a legal investigation of the matter.

The business being concluded with prayer, the meeting was adjourned till 10 o'clock next morning.

5th Sitting of the Convention.

The delegates convened according to adjournment, and elected Alexander Callender, esq. to be president.

Alex. Callender in the chair.

After prayer, the minutes being read and corrected, upon the motion of several members respecting the important and indefatigable services of the secretary, the unanimous thanks of the convention were rendered to him, and a proper return made.

An address to the public having been resolved by the convention again and again, and never brought forward, it was now moved by several members, that a scroll of it be presented before the rising of the convention for approbation; but after some conversation, it was agreed that the delegates should collect the sense of their constituents upon those matters on which they should address the public, and within a month from this date transmit the results to the secretary, and that he should lay the same before the general committee in Edinburgh, that from the whole, the persons employed by them might be able to draw up some complete publication, and that the final revisal of said publication, should rest with this committee.

It was now moved, that the convention

should follow up, and confirm the very important determination of last sitting, by the following resolutions.

1st. That the primary societies shall declare publicly and severally, their approbation of universal suffrage and annual parliaments, with their reasons for the same.

2d. That each society shall immediately enter in their minute book, a new declaration containing the two original resolutions of the association, and the explanation now given to them in the words of the duke of Richmond, and that the members of each already admitted, or that may hereafter be admitted, shall subscribe the same in testimony of his hearty approbation of them, and determination to prosecute them.

Both these motions were unanimously adopted.

The several motions for addressing and petitioning the King, and those for petitioning the House of Commons only, which were upon the table, were now taken under consideration in slump, as referring only to one or other side of the same question, when after many words, it passed by a great majority, that petitions for reform should be directed to the House of Commons.

Concluded with prayer, and adjourned till 6 o'clock.

6th Sitting of the Convention.—Alexander Callender in the chair.

It was unanimously agreed, that it be recommended to all the societies of the Friends of the People to follow the example of the convention, by commencing and concluding their meetings with prayers.

The convention then agreed to express their unanimous disapprobation of the Slave Trade, and resolved, that the same be marked in their address to the public, with their earnest wish for its immediate and total abolition.

Upon a motion to adopt some measures to bring to light and punishment, the perpetrators of oppressive and arbitrary acts, it was recommended to societies, where the facts were well substantiated to minute accounts of the same in a book.

The motions relative to finance were now taken under consideration, and the convention in consideration of the debt already incurred, and of the impossibility of carrying on with due effect, the important business of the association unanimously resolved, that previous to the two ordinary meetings of the convention in the year, each and every society, shall collect from its members the following sums, and transmit the whole faithfully by their delegates, to the next ensuing convention,—namely, from every member, if a master, the sum of one shilling every half year, and from every servant, if in employment 6 pence. These, together with the like sums paid at the entry of members, and all public donations, to be the fund for defraying the public expenses, and to be wholly at the disposal of the convention.—And the convention enjoined that the first collection on this plan be made, and remitted to the treasurer within one month from the breaking up of the present meetings of the convention.—They further appointed that a public subscription be opened by each society, for receiving the assistance of friends to the cause, who have not an opportunity of countenancing it openly.

Before adjourning the thanks of the convention were unanimously rendered to the country delegates for attending this convention so numerously, and for their able assistance hitherto in the business.

Concluded with prayer, and adjourned to 10 o'clock next morning.

7th Sitting of the Convention.

2d Day's Sitting.—*Edinburgh*, 30. *Oct.* 1793.

The Rev. Mr. Niel Douglas in the chair.

The roll being called, and [prayer] a blessing implored in name of the assembly by the president,—Mr. Scott reported, that the inner jailor said he had an express order from the lord provost and magistrates, not to admit.—Resolved that [the president] Mr. Chalmers and Mr. Mealmaker, dine with Mr. Muir this day.

1st, Mr. Ross's Motion was negatived.—Minutes read.

2nd.—[Mr. Skirving] Mr. Gourlay moved, that in addition to the collection made each evening, a subscription paper shall be presented to the company, for the purpose of raising a sum to defray the expenses of publications approved of by the society.—Agreed to.

3d.—[Mr. Callender's Motions to Petition for Universal Suffrage.]

A motion [from] was made by Mr. Miller, one of the delegates of Glasgow, to draw up an address to the people, which motion was ordered to be classed with Messrs. Bell and Brenner's—Mr. Sands from Perth moved, that we should agree upon the future proceedings of the friends of reform, and to explicitly declare our principles.

Mr. W. Hart moved, that it should be recommended to the editors of political *pamph.* to print part of them on coarse paper, for cheapness.

Mr. M'Arthur moved, that a public prayer should be made by the societies for the Lord's assistance in the cause of reform.

Mr. Gartley from Glasgow moved, that [we] the convention should take [our] into [their] its consideration, the resolutions entered into by the convention last year, for

supporting members oppressed by the arm of power.

Mr. Arch. Wright moved, that by the revolution settlement, [that] delegates have liberty to meet and consult upon their grievances.

Mr. Newton moved, that the convention when speaking of the constitution, should drop the word glorious, and say, "the purity of the constitution."

[Mr. Geo. Meliss Perth (through the hands [of Mr. Rt. Sands) moved, that one penny [per week should be collected from every [member of the societies of the Friends of [the People, which was classed with other [motions for finance.]

Moved by the rev. Mr. Neil Douglas, to publish [their] a disapprobation of the slave trade.—All these [were] motions were ordered to lye on the table.

Discussion of Mr. Callender's motion for universal suffrage and annual parliaments was called for.—Mr. Callender having spoke upon it for some time, and [the] read several printed papers [on] to show the necessity of its passing (he was reminded that it was proper to postpone what he had further to say, in order to wait on col. M'Leod, and therefore) the further discussion, was delayed till the evening sitting.

No. 3.—Rev. Mr. Donaldson in the chair.

Messrs Philips, Chalmers, and Gibson's motions, remitted to the authors to be condensed against next sitting, in conjunction with Mr. Hinshelwood.

No. 4.—Mr. Downie's motion being read, Messrs. Geo. Ross, Downie, Sands and several others spoke for the motion—Messrs. Wright, Aitchieson, Paterson, and several others spoke against it.—Mr. Skirving moved for a delay of any change of the title, till the primary societies should be consulted.—Resolved, that the convention shall make no alteration in the title of the general association, but leave it to the particular societies, to assume what name they please.

No. 5.—Messrs. Bell and Bremner's motions being read, with the condensed state of both, and a similar motion by Mr. G. Miller from Glasgow.—After some argument, and a motion of its being remitted to a committee, Mr. Donaldson proposed to keep closs to the main point, and not to interfere with other grievances.—Messrs. Douglas, Skirving, Cockburn, Philips and several others spoke in favour of the measure.—Messrs Downie and Aitchison objected to the word corporation laws.—[Mr. Callender has] after which it was resolved to remit the drawing up of a proper address and declaration of principles, &c. to a committee to be appointed to-morrow.

Messrs Callander, Douglas and [Moffat] Newton, having returned from col. M'Leod, reported *viva voce*, the polite reception they had received from him, and the assurances he had given them of his steady adherence to the cause, while the people proceeded in a constitutional way [but that he had expres-[sed his opinion at the same time, that the [people were not asking too much, not ripe [at present for universal suffrage and annual [elections, [being] which more than, in his [opinion would be granted, [he] though he [himself thought they were justly entitled to [it, and would support them as far as possible, [so far as the people went in a constitutional [[way.]]

The Rev. Mr. Douglas in the chair.

It was proposed that Mr. Callender's motion should now be resumed, but after some conversation, being now near four, it was agreed to adjourn till six.

A present of a considerable number of copies of a pamphlet, entitled "Proceedings of the Friends of the Liberty of the Press," was presented by Mr. Alex. Scott, and distributed gratis.

Eodem die.—Evening Sitting.—The Rev. Mr. Douglas in the chair.

The consideration of Mr. Callender's motion being resumed, Mr. Skirving read an extract from a pamphlet entitled "An Essay on Parliamentary Representation, and Magistracies of [Royal] Boroughs Royal, after which Mr. Callender delivered a very animated speech upon the motion, shewing a variety of reasons for adopting it.—A delegate from Dalkeith having started a question, whether we have a right by the constitution of 1688, to claim universal suffrage, and annual parliaments, or whether we ought to go farther back for authority,—Messrs Gourlay, Philips, Buchanan, Clark, Wright, Sands, Newton, Aitchieson and several delegates from the country, delivered their sentiments on this question.

The Chairman having left the chair,

A. Callender, esq. [in the chair] was called to it. Mr. Douglas then delivered a most judicious and sensible speech, upon the absurdity of representing property instead of men, and thus degrading the dignity of our nature.—Messrs. Philips, John Smith, A. Bell, Donaldson, and several other delegates from Perth, Dalkeith, &c. spoke on the same side; one gentleman observed, that the establishing of universal suffrage, would be only doing justice to the *rabble* of Scotland, the *swine* of England, and the *wretches* of Ireland.

Mr. Douglas in the chair.

In the further discussion of this subject, aquestion was started, whether soldiers or sailors should be allowed to vote, when Mr. Callender gave it as his decided opinion, that both classes ought to have a voice in the election of their representatives, and particularly the latter, who suffer so much from impress warrants, which would

have no existence, were universal suffrages established.

Mr. Skirving moved, that a collection be made for the expense of publishing tracts upon the subject of reform, when 3*l.* 6*s.* 0*d.* ½ was collected, which with 5*s.* received this afternoon, makes 3*l.* 11*s.* 0*d.* ½.

The subject of Mr. Callender's motion being resumed, the rev. Mr. Donaldson argued at considerable length, in favour of [the mo-[tion] it, and with [much] many historical and scriptural arguments, as well as several humorous [arguments] remarks, supported the motion.—Messrs. Mealmaker and Douglas spoke on the same side, and said it would be agreeable to a great majority of their constituents.

Mr. Donaldson proposed to pass the resolution of this meeting, on Mr. Callender's motion, in the words of the duke of Richmond, of which he presented a copy, which was read by Mr. Skirving.

Mr. Alex. Scott proposed to read a few extracts from [resolutions published by his [grace] the plan of parliamentary reform, framed and adopted by the Westminster Association, and introduced into parliament by his grace, which being agreed to, he read them accordingly.

Mr. Skirving [having] then moved, that the vote should be put, which was agreed to, previous to which however one of the delegates from Dalkeith said his colleagues who were absent, as well as the whole of his constituents, were unanimous for universal suffrage and annual elections.

After some arguments respecting the state of the vote, it was stated approve or not; Mr. Callender having previously agreed to Mr. Donaldson's amendment: when upon calling the roll and the votes being marked, it carried nem. con. Approve; whereupon all present congratulated each other by a hearty shake of the hand.

Mr. Skirving then read a letter from Mr. Muir covering a copy of a letter to the lord provost, setting forth the insolent abuse and outrage committed by the inner jailor, Wm. Binny upon [two members of the convention, [Messrs. Charles Bryce and] two gentlemen who had gone up to visit him upon necessary, and demanding redress from the magistrates. Upon this Mr. Archibald Binny moved that a subscription be immediately set on foot to prosecute the said William Binny. [But aft] This was seconded by several members, but after some argument it was thought proper to delay all proceedings in this affair till to-morrow.

Mr. Douglas then closed the business with a prayer suited to the occasion, and adjourned the meeting till to-morrow at 10.

Edinburgh, 31*st October*, 93.

Alexr. Callender, esq. in the chair.

The rev. Mr. Douglas having invoked the blessing of the Almighty upon our proceedings, the minutes were read and corrected, Messrs. Vickers, Todd, Blair and M^c^ Leay, and Adam Wilson, from Paisley were admitted visitors. Mr. Buchanan moved a vote of thanks to Mr. Skirving for his very great and important exertions in the cause of reform, which was unanimously agreed to. [Mr. Skirving read [several pages from the business of the address to the D. Saml. public being moved, [Johnston's History of the Magna Charta.—[Mr. Skirving's motion being taken into consideration, several country members wished [that a scroll of the address].

The business of the address to the public being moved by Mr. Mealmaker, and a wish expressed by him and several other country delegates, that a scroll of it should be drawn up before they go out of town, it was resolved after arguing [upon] at some length, upon a motion by Mr. Paterson, seconded and amended by Messrs. Wright and Aitchison, that a month from this date should be allowed to the societies in the country to communicate their ideas upon this subject to the secy. to be laid before the Edin. monthly committee at their meeting on the 1st Thursday in December, to whom the final revisal of the address to be drawn up by the committee is [committed] entrusted.—Mr. Skirving read from Dr. Saml. Johnston's History of the Magna Charta, a chapter concerning the first founder of the yearly folkmotte.

Mr. Skirving made the following [The se-[cretary's] motions [being read] viz. 1. That the convention shall follow up the unanimous resolution for universal suffrage and annual parliaments, by recommending to their societies to declare publicly and severally their approbation with their reasons: and 2dly that each society be called upon to draw up a new declaration containing the two original resolutions of the association as now explained and according to the explanation given by the duke of Richmond, and to require each member already admitted, or to be admitted to subscribe the same. These motions, after a short conversation, were unanimously agreed to.

The different motions to address the king being read, Mr. Mealmaker's was withdrawn, and Mr. Skirving moved, that all these motions be compressed into the simple question, Whether we shall address the king or the House of Commons. Upon this question various opinions were delivered, some contending that to petition the king was illegal, as desiring one branch of the legislature to encroach on the privilege of the others. Others that it was strictly legal to petition the king to recommend it, or at least to lay it before the parliament to take such a measure under consideration.

Messrs. Wardlaw, Scott, Donaldson, Aitchison, Douglas, Wright, Geo Ross, Buchanan, Callender, Johnston, Gourlay, [for the] spoke against addressing the king, and Messrs. Skirving, Chalmers, John Laing, and [several] one or two country delegates pled for the

measure. [Captain Johnston having come in as a visitor, the rev. Mr. Donaldson moved that the captain's opinion should be asked upon the question; and the convention having, upon a motion by the dep. secy. waved the regulation excluding visitors from speaking, capt. Johnston expressed his sense of the compli. paid him, and assured them of the continuance of his steady zeal in the cause of reform, but assigned a very satisfactory reason for not taking any hand at present in the business before them].

The debate being resumed, Mr. Wright moved that the different societies should be left to adopt what measures they pleased, and to petition either king or parliament.—Mr. Geo. Ross proposed to petition the H. of C. and at the same time to address the king to dissolve the parliament.—Mr. Buchanan objected to any address of this kind to the king, as tending to increase the royal influence: Mr. Paterson and Mr. Scott and Mr. Sands, proposed that this convention should recommend it to the societies at large to petition the H. of C. as their [only] representatives, either really or virtually. Mr. Chalmers insisted to petition the king, and said that his constituents were determined that they would not again petition the House of Commons.—Mr. Skirving said that upon our present plan we would perhaps not get a single member to present it.

[Captain Johnston at last rose and made a short speech strongly recommending unanimity, but expressing it as his decided opinion that it was both illegal and improper to petition the king, and that such a step would actually *ruin the cause*].

The rev. Mr. Donaldson delivered a conciliatory speech, replete with humour, but recommending it to leave the societies to do as they may judge proper.

[Mr. Skirving was sorry so serious a subject should be treated *in a ludicrous manner*].

Mr. William Urquhart objected to petitioning the king as a deviation from our original principles and declarations, and proposed putting the question to a vote.

Mr. Scott took notice that the Fife delegates were not unanimous for addressing the king.

A delegate from Fife expressed his disapprobation of petitioning the king, and said his constituents would as soon petition the pope.

A Glasgow delegate expressed similar sentiments [in name of his constituents] in his own name, [and] Mr. John Laing withdrew his motion.

Mr. Douglas in the chair.

Mr. Callender having left the chair, recommended unanimity in a very animated speech.—Mr. from Fife, withdrew his [opinion] opposition. Mr. Chalmers also withdrew his opposition, and begged that the minute of his constituents should be returned with a proper official recommendation. The [society] convention then resolved to petition the H. of C. as the only competent branch of the legislature to be applied to in cases of reform, and in the representation.—Mr. John M'Intyre congratulated the meeting on the unanimous decision of this debate on this very important question.

Mr. Donaldson and Mr. Mitchell from Paisley were appointed to dine with Mr. Muir.—Adjourned at a quarter past 4 till 6.

Eodem die.—Evening sitting.

Alexander Callender, esq. in the chair.

The minutes being read and corrected, the thanks of the convention were given to Mr. Skirving from the chair, for his integrity and services.

Mr. M'Arthur's motion respecting prayers was unanimously agreed to.

Mr. Scott's motion as to lord Daer, and Mr. Ross's as to H. Bell with-drawn.

The rev. Mr. Douglas's motion, to [exp] express our disapprobation of the slave trade, was unanimously agreed to; and it was resolved, that this dreadful and infernal traffick should be taken particular notice of in the Address to the Public, and the unanimous wish of the convention, for its immediate and total abolition, expressed in strong terms.

Mr. M'Cubbin's motion [amended and a] to recommend to the committee appointed to draw up a petition to parliament, to obviate the objections made against receiving petitions for reform, was unanimously agreed to after being amended as above.

Mr. Ross's motion,—that in order to bring to light and to punish the perpetrators of oppression and arbitrary acts, a person in every town should be appointed a guardian to discover, publish, and prosecute all such proceedings,—being read, it was agreed that [in [cases] where the facts are well substantiated, societies should minute an account of them in a book. Mr. Binny's motion to print the names of the members withdrawn, but resolved, that those who have withdrawn from the association shall be waited on, and their proportion of expenses demanded.

[Mr. Sand's motion to recommend it to the [societies to lay a penny per week on each [member.—Agreed to.

[Mr. Stephen Gibson's motion as to corres-[pondence, public instruction and finance.

[Mr. A. Buchanan moved a committee of [finance.

[Rev. Mr. Donaldson proposed 5*s.* to be [paid by each delegate.

[Mr. Buchanan proposed that the societies [should pay [in] 10*s.* 6*d.* each.

[Mr. Paterson [proposed] moved one shillg. [to be paid by each master, and 6*d.* from each [person who was not a master].

Mr. Skirving moved, that every member in the association, if a servant, and in employment, shall be [requested] required to pay 6*d.* towards defraying the public [charges] debt;

if not a servant, 1*s.* at least. That every new member to be admitted shall pay one of these sums; and that this contribution be levied two times in the year, previous to every convention, and sent up with the several delegates, and paid into the committee of general finance. Carried unanimously, after some debate, with this [proviso that amendment suggested by Mr. B.] proviso that the first collection shall be remitted within the course of the month.

Messrs. [Binny] Gourlay and G. Ross being appointed collectors for this night, the sum of 8*l.* 13*s.* 9*d.* was collected, which, with 2*s.* 6*d.* of overplus at dinner this afternoon, makes in all 3*l.* 16*s.* 3*d.*

[Mr. [Moffat] Sands reported, that the lord provost had expressed his regret, that any [obstruction should] insult should have been offered to any member of the convention, or any friend of Mr. Muir's. That he sympathised much with Mr. Muir, and agreed that six members of the convention should be allowed to dine with him; whereupon Mr. Wright moved, that the thanks of the convention should be returned to the lord provost, which was unanimously agreed to; but a member afterwards objecting, a warm debate ensued, which occupied much time; and the question at last being put to the vote, and the roll called, it carried by a great majority [to return thanks to] the lord provost and] The following gentlemen were appointed to [dine with—wait on his lordp.] to dine with Mr. Muir to-morrow, viz. Mr. [Boyd, from Dunfermline] Mr. Henchelwood, Mr. Hepburn, Mr. Campbell, Mr. Mitchell, Strathn. Mr. Philip, Dumfrs. Mr. Callander, P.

The rev. Mr. Donaldson read the scroll of a congratulatory letter [of thanks] drawn up by him and Mr. Douglas, to be presented to Mr. Muir, which being read, paragraph, [passed was with] after a very [little] few amendments, met the approbation of all present.

Resolved also, to send a similar letter of congratulation to Mr. [Muir] Palmer [motion,]—Mr. Skirving moved, that the thanks [to the] of this convention be given to the country delegates in general, and particularly to the rev. Messrs. Donaldson and Douglas, for their attendance on this occasion, which was done accordingly, and suitable returns made. The chairman concluded the business of the evening with a prayer, suited to the importance of the great and glorious cause we are engaged in.

Edinburgh, 1 *Nov.* 1793.

Mr. John Milne, from Newton, near Melrose, in the chair.—Morning Sitting.

The secretary read the minutes of last sitting. Mr. Downie presented a string of resolutions for discussion, when it was agreed, that the time of the convention was too far gone for these resolutions to have proper effect now, but agreed that they should be read over at the opening of the evening sitting, and lye on the table till next convention.

Mr. Hepburn moved, that the thanks of the convention should be given to Mr. Dav. Clark, the victim of the day, for his manly exertions in the cause of reform.—Agreed to.

It was then agreed to come to a discussion of the motion presented by Mr. Jas. Mitchell, for petitioning the king against the war.—[Mr. Mitchell drew a lively picture of the poor in support of the motion; he said, that commerce had been entirely knocked in the head by this war, and recommended to the convention, and every part of the *kingdom to petition against it*].

After several animated speeches, breathing the true spirit of benevolence and Christianity, it was unanimously agreed, to call upon the people of Scotland to unite, as one man, to petition the king against the war.

Rev. Mr. Donaldson moved, that it should be the secretary's business to recommend to the various societies, to send up those gentlemen as delegates, who are most able for that station.—Agreed.

Mr. Skirving moved, that the next convention should meet on the last Tuesday of April.—Resolved, and adjourned till the evening.

Motion by Mr. Wright, respecting the right of the people to choose delegates.—Agreed to, *nem. con.*

Evening Sitting.—*Eodem die.*

Mr. Walter Hart, from Glasgow, in the chair.

The minutes being read, Mr. Gourlay's motion for recommending provincial assemblies to be held, was discussed; when it was resolved to recommend it to societies in the country, to hold frequent intercourse with each other, and to meet at stated periods for that purpose; and also to establish societies in those places where there are known to be friends of reform; and likewise, in the interim, to send frequent deputations to each other.

Mr. Skirving read a printed copy of his circular letter, and proposed to publish something regularly once a month, on the reform business.—Resolved unanimously, to recommend this plan to the encouragement of the societies in the country, that they may write Mr. Skirving, within the month, how many copies they [may] intend to take.

Mr. Mealmaker's motion of thanks to Mr. Scott unanimously agreed to, and a proper return made by Mr. Scott. Mr. Richard Younger moved to support the Gazetteer.

Resolved, to recommend to the F. of the P. that they ought to do all in their power to support that paper in such manner as Mr. Scott may require.

A collection being made, 2*l.* 2*s.* 4*d.* was collected, which, with 2*s.* 10*d.* balance of reckoning, is 2*l.* 5*s.* 2*d.*

Mr. Callender informed the meeting, of

the reception he had met with from the lord provost.

Mr. Sinclair's motion for a subscription for Messrs. Muir and Palmer. Mr. Skirving moved an amendment, which was unanimously agreed to.

Mr. Callender moved the thanks of the convention to Mr. Wharton and his adherents, for the glorious appearance they made, on the subject of the constitution, on the 1st of June. Seconded by the Dep. Secretary, and unanimously agreed to.

Mr. Skirving moved the thanks of the convention to Colonel M'Leod, which was also seconded by A. A. and unanimously agreed to.

Mr. Skirving moved, that this convention express its ardent desire to cultivate a more close union with the societies in England, which was likewise unanimously agreed to.

Mr. M'Intyre moved the thanks of the convention to Mr. Callender. Agreed to, *nem. con.*

Mr. Binny moved a vote of censure on the conduct of the lord provost. Withdrawn.

Resolved to support Mr. Clark.

Resolved, that Mr. Skirving should dine with Mr. Muir to-morrow, and take any friend with him.

Mr. Callender moved the thanks of the convention to the secretary and the depute-secretary, which were unanimously agreed to; and the same compensation as formerly was voted him for his trouble, with something more when the funds can afford it.

The MS. pamphlet, entitled, "A Review of the British Constitution," was remitted, for want of time, to the consideration of the Edinburgh monthly committee, and the secretary was empowered to write the author.—Closed by prayer—J. M'Intyre.

Additional Delegates

From Stirling, in favour of Robert Forrester [*2l. 2s. 0d.*].
Darwell—John Cleland *1l. 1s. 0d.*
Dundee—Geo. Ross.
Linlithgow—Stephen Gibson.
Calton—Peter Hunter, Wm. Boyd.
Strathaven—James Wilson.
Hamilton—Wm. Haddow, James Hamilton.
Eddleston—Thomas Noble.
Dundee, Newburgh—Apologies.
Pathhead—Robert Rait, John Halley.
Musselburgh—John Niven, Duncan[Clark] Charles.
Dundee—Geo. Mealmaker.
Fenwick & Kilmaurs—Robert Muir.
Forfar—Patrick Miln.
Selkirk—William Johnston.
Nov. 25. Dunfermline—Peter Reid.
Linlithgow—George Brockley.

Edinburgh, 6 Novem. 1793.

General committee.—Citizen Urquhart in the chair.

It was [Geo. Ross] moved, that strangers, who often attended the societies, and who never came forward to subscribe the books, should be called in question, and asked their reasons. [Supported by Messrs. Scott and [Beany, and M'Leish; opposed by Messrs. [Laing Wylde, &c.] It was agreed for the secretary to go round, and collect the names of the strangers.

Citizen Hamilton Rowan, Simon Butler, from Ireland—Margarott, Sinclair, and Gerald, from London—were introduced, and received with acclamations. The secretary read the minutes of last committee.

The secretary stated, that in consequence of the delegates from London having arrived too late for the convention, he, with advice, had recalled the delegates from the country, and appointed the 19th of [next] this month to be the first day of meeting.

Citizen Margarott, from London, stated to the committee, that 500 constables attended their meeting in London, in order to apprehend them when sending delegates to this country: They overcame that obstacle. But a journey of 400 miles is not a journey of a moment. They arrived the day after the convention, hoped that the recalling the delegates would strike terror [into] in our enemies; and while we behaved according to the laws of the country, we did not need to be afraid.

Citizen Buchanan moved, that the delegates from London should tell us the situation of their society.

Citizen Margarot answered, that the societies in London were very numerous, though sometimes fluctuating. In some parts of England whole towns are reformers. Sheffield and invirons there 50,000. In Norwich there are 30 societies in one. If we could get a convention of England and Scotland called, we might represent 6 or 7 hundred thousand males, which is a majority of all the adults in the kingdom, and ministry would not dare to refuse our rights.

Citizen Butler said, he did not know how far he was at liberty to say any thing as he was not a delegate, but he would give an account of Ireland: the executive part of the government were almost omnipotent.—The landed interest is almost aristocratic—The manufacturer idle,—last parliament was expected to have given Ireland emancipation, however that prospect was flattering, a few weeks changed the scene. An infamous coalition took place between the opposition and ministry.—The Catholics retired with what they had got. No longer opposed by them, the government turned their oppressive measures against the friends of reform,—the United Irishmen were prosecuted, he himself had experienced 6 months imprisonment. Belfast was declared to be in a state of rebellion; tho' freedom was not cried up in the streets, yet it dwelt in almost every heart, universal emancipation was the measure for which he was an advocate. All that he knew

of this country was, that the first day his form [he] was in Edinburgh, he was arrested for nothing that he knew except it was for being so wicked as to come here. In Scotland they yet met in convention.—In Ireland the parliament had enacted laws against it. When a law like that should take place here, he was afraid freedom would vanish. [If you [wish to guard against slavery—]

Mr. Callender said, that he hoped those that would pass such an act of parliament, should be forced to eat it, and hoped that Scotland and England should not submit to it.

Citizen Gerrald said, that he came here armed with the power of delegation. If our neighbour's house is on fire the greater should be our vigilance to prevent the flame seizing our own. A parchment piece of justice had been presented in Ireland, he hopes that if ever it was passed here, we should throw it in the face of our oppressors. Every thing the people had gained had been thro' conventions, the revolution was the consequence of a convention. The revolution established that trust abused was revocable, the revolution excluded all placemen and pensioners;—do we enjoy any benefit from that act? It made ministers responsible;—how many bad ministers have we seen go down to the grave in peace, and honoured with all the dignities a king can confer? [hoped that] union would carry our principles into execution. A citizen from Ireland told you, that as soon as the alarm bell was rung, the opposition joined the minister, party is ever a bird of prey and the people their banquet.

The secretary read the circular letter he intended to send to the delegates.

Citizen [Mr.] Scott read a letter addressed to the secretary approving his conduct in calling the new convention.

Mr. Buchanan advised the secretary to add to the circular letter to the delegates, that they should make up their minds upon what address they would give to the public.

The secretary stated to the meeting that an order had come down for removing the convicts, but to what place or when it was not known, he thought that it [would] was meant to raise a tumult, by which [it] our convention might be stopped. He therefore read a hand-bill to be distributed among the people to keep them on their guard.

Mr. Wright, Mr. Aitchison, and Mr. Scott, were against the motion.

Mr. Scott said that Mr. Muir suffered with a magnanimity that required our admiration; he begged to call their attention to a motion which was made for a subscription for Mr. Muir. He is suffered in our cause, we owed him a mark of our esteem; he hoped the greatest of all ties, gratitude, would stimulate our exertions.

The following committee is appointed to [put] carry into effect a subscription for citizens Muir and Palmer, Mr. Skirving, Binny, Callender, Moffat, Urquhart and Scott.

A citizen member moved that we should approve of the delegation from London and testify our readiness to co-operate with them in our great undertaking.

A collection was drawn for the use of the meeting, 1*l.* was [drawn] collected.

[The chair] The thanks of the meeting was given to the delegates from London and Ireland.

Citizen Sinclair said that they did not come here for thanks, but to merit them. He said that it was only unanimity that could ensure our success, let us then persevere.

Mr. Hamilton Rowan said, that

The chairman returned in a most sensible and animated speech the thanks of the convention to the delegates from England and the friends from Ireland; he said may a sense of duty pervade the breast of every man, not the distinction of Scotsman or Englishman, but as men exert all our abilities in the great cause.

Citizen Butler said, that the thanks of the virtuous must always be felt by the friends of freedom.

Citizen Margarot did not rise as a delegate from London, to express his acknowledgement of thanks, but wished to know was the nature of the present society.—The secretary gave the information.

It was moved and agreed to that the hon. Simon Butler and A. Hamilton Rowan should be admitted.

Citizen Butler said that he had, in his own society, taken a test to be steady in the cause of reform, [he sai] it was a test engraved on his heart, and which he would carry to his grave.

It was agreed that the powers of the delegates of our convention continues until another convention is called.

1st Day's Sitting.—*Edin.*, 19 *Nov.*, 1793.

General Convention of Delegates.

Mr. Walter Hart from Glasgow was called to the chair.—The roll being called [additional d] new commissions read, and additional delegates added to the list.

Mr. Margarot moved, that a committee be appointed to draw up rules for the internal government of the convention which was seconded and agreed to. It was also resolved after some argument upon this subject [that [resolved] that the tickets of admission shall

be delivered to the delegates to-morrow with their names inscribed on them by the secretary.

Mr. Skirving moved that a committee be appointed to draw up the address to the public formerly resolved on by the convention.

The following committee was appointed to draw up the rules for internal regulation, viz. Mr. Margarot, Mr. Brown, lord Daer, Mr. J. Clark, Mr. [Hart] Sands, A. Callender, esq. Mr. Gartley, Mr. Wm. Muir, Mr. Wm. Skirving.

Mr. Sinclair moved, that lord Daer's resolutions presented to the first general convention be remitted to that committee, which was agreed to. Mr. Gourlay moved that lord Daer be called to the chair, which was seconded by the depute secretary, but opposed by citizen Daer himself, as well as citizens Gerald and [Brown] Sinclair as savouring too much of a spirit of [complimenting the] aristocracy; whereupon it was unanimously resolved to call Mr. Callender to the chair.

The meeting being constituted by prayer, and the whole of the last minutes read, the secretary [moved] repeated his motion, that a committee be appointed to draw up the address to the public.

Lord Daer expressed his disapprobation of trusting too much of the business of the convention to committees. Mr. Brown from Sheffield urged many arguments upon the necessity of appointing committees on particular business.

Mr. Margarott moved, that previous to publishing an address to the public, a committee be furthwith appointed to consider the means, and draw up the outlines of a plan of general union, [which] and corporation between the two nations in their constitutional pursuit, [which was unaly. agreed to] of a thorough parliamentary reform, which was unanimously agreed to.

Mr. Margarot also moved, that the convention sit but once a day, and that the evenings be allotted to committees. A member from Glasgow proposed as an amendment, that the convention should sit in the evening, and the committees in the forenoon.

Lord Daer ovserved, that it would be proper to avoid an aristocratical dependence on committees, and to delay appointing of committees, till the mode of appointing them was [adopted] agreed upon.

Resolved, that committees shall meet in the forenoon, and the convention, at five in the afternoon.

Mr. Wright moved, that the committee appointed to meet to-morrow, should be an open committee.

Mr. Brown from Sheffield, objected to it, as tending to obstruct the business of the committee.

Lord Daer proposed, that in this particular case, the past practice should be adhered to.

Mr. Brown replied, and several other speakers, when it was unanimously resolved, that [all the] it should be a shut committee.

Resolved, that all the delegates from England, be members of this committee.

The depute secretary moved, 1st, That it be enacted as a standing law, of this, and all future conventions, that no member of [this or] any [future] convention, shall be called to the chair [twice during] above once during the different sittings of [the] any genera convention;—and, 2dly, That no delegate called upon by public acclamation or shew of hands, shall upon any pretence refuse to take the chair.

The meeting being closed by prayer, was adjourned till to-morrow afternoon at 5.

Second day's Sitting, 5 o'clock in the evening.
—Alex. Callender in the chair.

This sitting commenced with delivering tickets to the members of the convention. The following visitors were admitted, capt. John [Gibson] Fisher, [Wm. Smeall,] from Glasgow, and Wm. Smeall, from Pennicuick; John Wilson, from New Town Society; D. Hutchison, from Kinross; D. Grieve, from Inverkeithing; D. Forest, and Messrs. Thomson and Paterson, from Stirling; R. Ogle, Mr. Drummond, and Mr. Ramsay, from Dumfries; James M'Kain, from the Operative Society, Melrose; Simon Corfor, Chas. M'Laren, and William Brown [Adam.]

Mr. William Watson, from the Dalkeith Society, paid one guinea to the general fund. The convention being constituted by prayer, and the minutes [being] read, and some general observations made, the secretary read [the following] two letters, one from Richd. Davidson, secty. to the constl. society at Leeds, apologizing for not sending delegates to the convention, and another [one] from Newton, signed John Milne [D°.] offering a similar apology.

Mr. Jackson, from Pennycuick, in the chair.

Lord Daer gave in the report of the committee who sat this forenoon on the business referred to them.

Mr. William Johnson, [delegate] from Selkirk, paid Mr. Skirving one guinea towards the general expence, in name of that society.

Mr. Scott moved, that the rule in the report respecting the appointment of three minute takers, should be first discussed. Lord Daer, [proposed to take] after explaining what was meant by the term minute takers, proposed to take up the question respecting the divisions first.

Mr. Binny objected to the plan of divisions, as tending to lose time instead of saving it. Resolved by a shew of hands to consider this question first. Lord Daer explained the necessity and utility of such divisions, repelled the objections that might be made against the plan, and shewed that it entirely set aside the difficulty that had been started against the committee sitting in the forenoon, as tending to throw the majority of the con-

vention idle. He also shewed that this plan would tend, both to repress the forward, and to encourage the diffident, and would contribute much to the improvement and instruction of all the members of the convention, by making the members acquainted with each other, and thus giving to many, good ideas which might be started in these small divisions, that thro' modesty would never be brought forward in large meetings.

Mr. Brown reminded lord Daer, that one reason why the committee approved of the division plan, was that it pointed out the best means of appointing committees.

Mr. M'Intyre, objected to the plan of divisions, and recommended, rather to adopt the genl. assblys. method, [plan] of overtures, as preferable.

Citizen Gerald, vindicated the plan of divisions, as tending to [prepare] enable the convention to make up their minds upon the business to come before them.

Mr. Buchanan proposed only 3 divisions, consisting of [at] large numbers.

Mr. Margarot vindicated the plan, as tending to shorten the business of the convention; he insisted that the familiar intercourse that would take place in these divisions, would be the chief use of them.

Mr. Geo. Ross objected to the divisions, as tending to give influence to leaders.

A member from Paisley, said this could not happen, as the divisions were to be chosen by lot.

Mr. Wright [and A. Aitchison,] agreed with Mr. Buchanan, in appointing more [number] numerous divisions, and said that 25 ought to be the number.

A member having———

Mr. Sinclair shewed the necessity and importance of the plan of organization, and insisted that the divisions were necessary, and that the loss of a day or two ought to be of no consideration, compared with the magnitude of the object.

Mr. Margarot promised in name of himself and his colleagues from England, that they would grudge no time to execute with propriety the business they were come upon.

Lord Daer vindicated the division plan, as tending to prevent, that otherwise unavoidable assumption of power which took place at the first convention, and which unavoidably takes place at all public meetings.

Mr. Brown from Sheffield, rose to remove any remaining objections that might be made against the plan; he urged that the grand point in raising a good superstructure, was to lay a good foundation, to do which, no time should be grudged, and shewed the great utility of the plan in the nomination of committees.

Mr. Jo. Clark, expressed his approbation of the plan, but started a difficulty about the mode of executing it.

Mr. Skirving said, that the easiest and readiest mode was for every delegate to give in his ticket, and when mixed in a hat or the like, to take them out as they lay.

Mr. Callender moved the question, divide or not? When it carried unanimously in the affirmative.

Lord Daer called the attention of the meeting to the question, as to the number in each division, whether 15, or 20.

Dept. secretary proposed 25 as the number.

Mr. Scott pled for this measure.

Mr. Brown pled that 15 was a sufficient number, [and repeated lord Daer's argts.]

Resolved by a great majority, that [15 [shall be] that the number of each division shall be about 15, and that 11 o'clock shall be the hour of meeting.

Lord Daer proposed as the best mode of division that it be done by lot. Agreed to unanimously.

Lord Daer proposed as the period of renewal, once a week.—Agreed to *nem. con.*

He then proposed that the best mode of dividing by lot would be to collect the tickets immediately, and then mingle and draw them promiscuously, and set down the names according as they shall be drawn.—Agreed to unanimously, and M[ess]r. Callender having collected the tickets they were drawn as follows:—

1st Division.—Jas. Dun, Jas. Gartley, Wm. Farquharson, John Stark, Alex. Aitchieson, John Braidwood, John Muir, Tho. Cockburn, Robt. Forrester, James Mutter, Robt. Christie, John Buchanan, Geo. Malcolm, Robt. Muir, James Smith.

2nd Division.—John Taylor, Henry Rait, Jas. Cunningham, Jas. Tweedie, David Gowans, Jas. Boyd, Geo. Cotton, Geo. Milne, D. Taylor, Wm. Philp, John Thomson, A. Knox, Walter Hart, John Cleland, David Bertie, John Gilchrist.

3rd Division.—Mitchell Young, Thomas Noble, James Lawson, John Gartley, John Wilson, James Wilson, John Inglis, T. Cockburn, D. Weir, Jas. Foyar, Jas. Smith, Sam. Paterson, John Wild, Wm. Bonthron, Dav. Downie, David Lyon.

4th Division.—Peter Moffat, Joseph More, Wm. Robertson, Tho. Tweedale, Lord Daer, John Jackson, J. Graham, Jas. Bourden, Alex. Bremner, Archd. Gray, Alex. Callander, R. Peacock, John Johnston, Peter Hunter, John Grindlay, Robert Sands.

5th Division.—Arch. Hastie, John Baillie, Arch. Wright, Geo. Anderson, Adam Pringle, [Peter Wood,] David Gowans, Geo. Ross, Adam Richmond, John Smeall, James Smeall, Alex. Plenderleith, Wm. Fleming, John Wardlaw, Wm. M'Cubbin, Wm. Tod Links.

6th Division.—John M'Intyre, Duncan Charles, Chas. Dantzker, Wm. Haddow, Jas. Bell, Colin Norrie, John M'Arthur, Stephen Gibson, F. Watson, Chas. Sinclair, John Hepburn, Alex. Fortune, Jas. Richmond, M. C. Brown, John Noble.

7th Division.—Alex. Bell, Peter Mill, John

Gourlay, John Richmond, Peter Hardy, John Laing, Wm. Ross, John Dickson, Jos. Smeall, John Henselwood, Wm. Simpson, Alex. M'Kenzie, James Purvis, Arch. Binny, David Brown.

8th Division.—Geo. Cleland, Wm. Romanes, David Burn, Andrew Newton, John Wilson, Wm. Urquhart, Geo. Mealmaker, Maurice Margarot, John Clark, Wm. Johnston, David Weir, Joseph Gerald, John Hodge, Wm. Boyd, James Little.

9th Division.—Jas. Paterson, W. Brodie, Alex. Cockburn, Geo. Waddle, Eben. Stalker, Wm. Martin, Geo. Turner, Randolph Slack, Thos. Bell, R. Orrock, Wm. Caspar, John Thynne, John Fairley, —— Taylor, Peter Leyden.

10th Division.—Arthur M'Ewen, James Thomson, J. Auchinleck, James Tod, J. Thomson, Jas. Calder, Rich. Younger, Wm. Watson, Arch. Gibson, Wm. Muir, David M'Bain, J. Lawson, C. Ritchie, Dugald Murray, Chas. Gray.

11th Division.—James Ferguson, Wm. Skirving, John Kirk, James Carmichael, Andrew Simpson, Geo. Callum, James Wilkie, James M'Kay, Wm. Eelbeck, Chas. Salter, David Lyon, John Dunn, Thos. Noble, John Niven, Wm. Moffat, Alex. Reid,

While these lists were making out, the convention argued the question respecting the mode of appointing committees, when, after a number of different speakers had delivered their sentiments on the subject and proposed different plans;

1st. Resolved, that the divisions shall name a leet for the committees of the number of whatever it may be.

2d. That the priority upon a leet shall depend upon the number of individual votes which shall be marked upon the leet of each division.

Resolved, The 1st division to meet in the Canongate lodge.—The 2nd division to meet in Mr. [Cotton's E. end Cross causeway] Philip's school.—The 3rd in citizen Ross's Liberty Court.—The 4th at the Gazetteer office.—The 5th at [Liberty] Gazetteer stairs.—The 6th at ditto.—The 7th Mr. Robertson's school Simon's square.—The 8th Mr. Mullo's Liberty stair.—The 9th to meet in the steward's room.—The 10th to meet in this lodge.—The 11th Mr. Campbell Warriston close.

Lord Daer proposed that any new delegates who may attend the convention after this arrangement, shall be added to the different divisions in their order.

Mr. Scott announced as a new delegate citizen Walker, deputed, but without a formal commission of delegation from citizens Muir and Palmer, &c. at present on board the Royal George.

Mr. Margarott moved, that a committee be appointed to consider and draw up a proper plan of union between the two nations according to the resolution passed yesterday.

Lord Daer moved that it consist of 13.—Both motions were unanimously agreed to.

Citizens Callender and the president were deputed to wait upon the society of shoemakers and request [respecting] the use of the lodge to-morrow [on Friday] night [first]. The tickets being delivered to the delegates, and the places of meeting for the divisions read over, a motion was made for a collection but as many had now gone away, the collection was postponed till to-morrow evening, when it is hoped it will be the more liberal. The chairman having closed the business by prayer the convention adjourned till to-morrow at 5.

Edinb. 21 *Nov.* 1793.

Mr. Jackson in the chair.

A motion was presented [from] and read, signed by Messrs. Robertson and Campbell, that each stranger admitted shall pay 1*s.* and all members of the association who are not delegates shall pay 6*d.*

Mr. Skirving informed the meeting that the rev. citizen Douglas of Dundee had sent a parcel of books entitled "Thoughts on Modern Politics," which he authorised him to sell and devote the one half of the money to the Funds *of the Convention; Whereupon the* [visitors admitted] Mr. Reid, Mr. Jas. Pearson, Potter-row, Mr. David M'Knight, Charles M'Laren, and George Brown, Potter-row, John Thomson, Andrw. Cockburn, Mr. Smith, from Pennycuick, Mr. Thomson from Stirling, Mr. Petrie, *Mr. Lawrie New Town society.*

The depute secy. moved that the thanks of the convention be returned to be returned to Mr. Douglas for this instance of generosity.

The following visitors were admitted

(21 *Nov.* 93.)

The minutes being read and prayers said, Mr. Margarot was unanimously called to the chair.

The reports of the divisions being given in while the secretary was marking the votes, the depute secretary informed the convention that he had last night received fifteen shillings from 6 of the visitors who had been present and which was paid to Mr. Skirving, with 3 shillings received from visitors.

He also moved that a general collection should be made, which being agreed to, and Messrs. Callender and Scott appointed collectors, there was drawn instantly 4*l.* 5*s.* 8*d.*, of which there were 2 bad shillings, balance 4*l.* 3*s.* 8*d.*

Mr. Binny was appointed to read the reports of the different divisions as stated in the secretary's cross lists, and a leet being taken from those who had the majority of numbers, they were unanimously elected by the convention, (except Mr. Buchanan, who declined the election) as a committee for the purpose of forming a union, viz. Messrs. Margarott, Gerald, Brown, Sinclair, Daer, Callender, John Clark, Sands, Mealmaker, John Gartley, A. Scott, Hart and Hastie. Mr. Callender suggested that it would be proper

to enter into a discussion on the nature of the [union] proposed union.

Mr. Brown moved the convention to resolve itself into a committee to afford greater freedom of speech.

Mr. Buchanan objected to this proposal on the supposition that it tended to take persons by surprise.

Mr. Gerrald stated that to honest men nothing is so valuable as truth, and that nothing can possibly tend so much to the disclosure of truth as discussion and deliberation—that it was also very important that the committee should know as much as possible of the public mind in order that they might act in unison with it.

The convention then resolved itself into a committee upon the motion of Mr. Brown, and many valuable hints were thrown out by citizens Brown, Hastie, Mealmaker, Scott, Callender, Urquhart, Buchanan, Campbell, Gourley.—Gerald observed that whatever difference of opinion might exist in these walls, we can never forget that our friends and our enemies are in common, and that our object is equally the same. He [next] took a review of the means we are to use in order to secure our object. He entered fully into the subject of universal suffrage and annual parliaments; he fully proved the rights of the people to these benefits by their ancient constitution [and with an energy and eloquence which it were in vain to attempt to follow; he entered in, on, and reviewed the sound and universality]; he minutely investigated the principles of government; he asserted that the end of all government is the good of the governed; that if money be taken out of his pocket against his consent, it is of little consequence whether it be taken [without] by the robber on the heath, or the monarch on the throne; he made many [pertinent] remarks upon the Revolution settlement and the benefits gained by the last Revolution, and demonstrated clearly that they *are now totally taken away;* he warned the convention against the choice of any other than known and plain men like themselves, men uncontaminated by the pestilential air of courts.

Mr. Jackson from Pennicuick paid Mr. Skirving a guinea towards the common fund in name of that society.

Mr. Skirving moved that the convention be resumed, and that some business be chalked out for the committee—seconded by Mr. Brown.

Mr. Sinclair, in absence of lord Daer, gave in the continuation of the committee's report respecting the election of presidents, of three assistants, one to go out daily, and respecting the council of the table.

The [door] collection at the door amounted to - - - - - - £.0 19 3

More - - - £.0 1 0

£.1 0 3

Which was delivered to the treasurer, Mr. Reid.

Mr. Sinclair proposed that the whole reports of the committee should be delayed till the report was completed.

Mr. Clark and Mr. Sands proposed an immediate decision.

Mr. Brown obviated Mr. Sands's fear of a delay.

Mr. Sinclair urged as a reason for delay, that lord D. was employed in completing the report of the committee.

Mr. Brown proposed that the first rule be immediately adopted, [agreed to] which was at last agreed to, and the resolutions being severally put, it was resolved unanimously that all the three resolutions be agreed to.

Mr. Callender moved to fix the hour and place for the committees to meet.

Resolved the committee on the regulations meet here at 11 to-morrow.

The general meeting at 3 o'clock, and the other committee at 8, at the [committee] Black Bull.

The names of the members of the different divisions or classes were then read over with their places of meeting, after which the president concluded the business with a suitable prayer, and the meeting adjourned till to-morrow at 3 o'clock.

Edinburgh, 22 Nov. Friday.

4th Day's Sitting.—Mr. Margarot in the chair.

The reports being called for and read, [the] citizens John Clark and Arch. Hastie of Paisley were found to have the two highest numbers, Mr. Clark having 26 votes, and Mr. Hastie 24; but Mr. Clark being absent, it was unanimously agreed that Mr. Hastie [should be called] should be [was] called to the chair.

The minutes being read, and Mr. Margarot having said prayers,

Mr. Hastie took the chair.

The leets for assistants to the secretary were then read from the different reports, and the following gentlemen were found to have the majority of votes, viz. Charles Sinclair, Wm. Ross, and Geo. Ross.

Mr. Wm. Ross having pled an apology, which was sustained,

Mr. John Wilson was found to have the next highest number, whereupon Messrs. Sinclair, Wilson, and Geo. Ross being proposed as assistants, were unanimously elected by the convention, and took their seats at the table accordingly.

Citizen Sinclair then delivered the report of the committee, containing the following resolutions, which being read from the chair separately, and the question put upon each of them, were unanimously agreed to, viz.

1st. That no person be elected to the chair twice in one week.

2dly. That strangers [shall] who wish to be admitted as visitors shall send in their names

to the council at the table previous to their admission.

3dly. That they shall all sit upon one seat.

4thly. That they shall not mingle with the members of the convention under the pain of exclusion.

Mr. Sinclair in name of the committee asked leave for the committee to sit again, which was granted, and to morrow at 10 appointed.

Citizen Gordon Murray, the door-keeper, received orders to put the laws respecting visitors in execution.

(The following was written on a separate paper.)

Mr. Sinclair read the report of the committee [who] and moved [and agreed to] several resolutions, which were agreed to.

Read a motion made by Mr. [M'Intyre] Newton for appointing a day of fasting, seconded by Mr. Mealmaker; after several gentlemen were fully heard upon it, an amendment was proposed by Mr. Gerald, namely, that it be recommended by the convention to the friends of reform in Great Britain and Ireland to invoke the blessings of Almighty on their endeavours to procure liberty and happiness and liberty to mankind.

A motion for supporting the Edin. Gazetteer, which was ordered to lie on the table.

Agreed that the regulations regarding strangers should be given to the door-keeper in writing; agreed that those members who are obliged to leave the convention should write to their constituents to appoint others to supply their place immediately.

Mr. Andrew Newton's motion given in last night was then read by the deputy sec. stating a variety of reasons urging the propriety of the convention appointing a day of general fasting and humiliation—for our sins, and for praying to the Almighty for success to our cause. This motion was seconded, and strongly supported by Mr. Mealmaker, as well as by Messrs. Callender, John Clark, and others, but [opposed] was objected to by Messrs. Taylor, Sands, Margarot, Paterson, and Aitchieson as tending to blend religion with politics [and] to divide the friends of reform, and to render the convention ridiculous, by enacting what they neither had right to enact, nor power to enforce.

Citizen Gerald then proposed to recommend the propriety and necessity of applying for divine aid, but not to enjoin any thing on the subject—Mr. Skirving moved an amendment to that purpose which was seconded by Mr. John Wilson.—Citizen Gerald then [made the following] moved the amendment in the following terms, which being read from the chair, and the question put was [unanimously] agreed to by a very great majority, viz.

"That this convention do earnestly recommend both to the members of this convention and to the friends of freedom and reform through Great Britain and [reform] Ireland to invoke the blessing of Almighty God, who is the common Father of all men, on the cause in which we are engaged."

The original motion of course was laid aside.

Citizen Skirving then moved, that the address to the public should be drawn up by the committee upon the union, which was unanimously agreed to. A motion to support the Gazetteer signed by six members was read, and ordered to lie over till to-morrow.

A motion was presented by the secretary and dep. sec. that a committee of finance be appointed. [The council of the table were [appointed accordingly.]

Citizen Scott moved, that before any delegate from the country shall leave his post, he shall write to his constituents to send another up in his room—agreed to *nem. con.*

The sec. then moved, that delegates from the country, who may run short of money by the prolongation of the business of the convention shall be [allowed] supplied by the treasurer. The council of the table were appointed on this business. Messrs. Callender and Fortune being appointed collectors, 1*l.* 10*s.* was drawn.—The chairman having closed the meeting by prayer, the convention was adjourned till to morrow at 12 noon.

5th Day's Sitting.—Convention Hall. *Nov.* 23.

Citizen Hastie in the chair.

Reports from every [society] section, except No. 11.

Committee of finance appointed, John Buchan, James, Gartley, [M. Campbell Brewer,] Alex. Fortune, Alex. Scott, Cleland [and Wil[son] from Newmilns equal.

Citizen Gerald appointed chairman for this day's sitting, and citizen Binny assistant goes out of course citizen Wilson, when citizen G. Ross read the minutes of last sitting.—The president stated, that this morning he had received a letter from our friends in Norwich, who desired him to inform the convention, that they remained steady in the cause, and had nominated citizen Margarot, their delegate, and that they would contribute their share of the expenses attending the convention. Mr. Margarot accordingly accepted of the office, who congratulated the convention upon the accession of such a great number of friends.

Upon it being stated, that citizen Gerald had business, public and private, to [exact] transact immediately, and requested that he should leave the chair—agreed to—and citizen Urquhart was elected to the chair.

A motion was read, that a voter of convention should prove the unity of the delegates, from the South and North.

Citizens Muir, from Kilmarnock, Margarot, from Norwich, and several others, supported the motion, which was unanimously agreed to.—Citizen Scott proposed that all the members should rise up and join hands, as a proof

of the union betwixt England and Scotland, which are now joined as Britain—agreed.

It was moved, that thenceforth the convention should be styled the British Convention of the Delegates of the People, Associated to obtain Universal Suffrage, and Annual Parliaments. Agreed to unanimously.

A motion was made for the convention, allowing the members of the United Society of Irishmen, [be allowed to vote and] to speak and vote here.—*Referred to the sections.*

A committee was appointed to consider the motion respecting the Gazetteer.

Citizen Margarott, E.—Brown, E.—[Wm. Ross] Binny, E.—[Jo. Wilson] [Wylde] Skirving, E.—[Callender] [Downie] Jas. Gartley, E.—John Hepburn, E.—Mealmaker, E.—

Appointed to meet in citizen Ross's Liberty court, at 8 o'clock this evening.

Citizens Muir, Hastie, Taylor and Cunningham, requested leave of absence, which was granted upon condition, that they would do their utmost to send delegates in their places.

Letter read from Mr. Colin Norrie Montrose, announcing his departure, and requesting minutes of the convention to be sent him, answered that he would receive them in the Gazetteer.

Motion by Mr. Jas. Gartley, respecting dividing the country into departments, and appointing provincial conventions, whereby they may become more acquainted with each other's sentiments;

Referred to the Committee of Union.

Mr. Skirving moved Mr. Binny, in place of Mr. Muir, [Hastie] on the committee of [Union] regulation—agreed.

Mr. Urquhart on do. in place of Mr. Sands, and Mr. Wright, in place of Mr. Hastie, on the Committee of Union.

Resolved, that all committees shall have it in their power, to invite the assistance of such members of the convention, as they think may be beneficial to the business intrusted to their charge.

Conversation on the sections, resolved to continue till Monday, as at present.

Motion by cit. Gordon Murray, containing thanks to the movers of the division into classes, mentioning the advantages already obtained from it, and requesting a fresh shuffle—referred to the committee of regulations. —Agreed that the members of societies in Edinburgh, join the sections.—Citizen Murray gave in a report, respecting the use of the lodge.

The president warned the sections to meet as fully as possible on Monday.

Adjourned till 5 on Monday.

6th Day's Sitting.—*Edinburgh*, 25 *Nov.* 1793.

Mr. Urquhart in the chair.

The tickets were ordered to be gathered from all present, and the door-keeper to collect them from those who come in afterwards.

The following new commissions were read, viz.

From Dunfermline, in favour of Mr. Peter Reid.—Linlithgow, M. Geo. Brockly.

The reports of the sections being called for, were given in and read, when citizen M. C. Browne, was found to have a decided majority for being elected president.

Mr. Urquhart having constituted the meeting by prayer,

Citizen M. C. Browne, was unanimously elected president, and took the chair accordingly.

The reports of the sections being again read, the choice of an assistant, citizen Young was found to have the greatest number of votes, but being absent, citizen Sam. Paterson was found next highest, and was elected accordingly.—Citizen A. Callender moved, that in case the minister bring into the Commons House, a motion for a convention bill, it shall be noticed immediately [ordered] to the delegates.

6th Day's Sitting.

A motion was given in, for printing all papers respecting the objects of the convention in the Gazetteer office.

A motion by Jas. Gartley and Wm. Ross, for not receiving any motion that may tend to a religious discussion, was brought under consideration, which, after some discussion, was, with other motions of the same nature, laid aside, and the convention passed to the order of the day.

Citizen Sinclair's motion, relative to admitting the members of the United Society of Irishmen, to speak and vote in this convention came forward for discussion, when citizens Sinclair, Callender, Gerald, John Gartley, Buchanan, and others, spoke upon it, and agreed to and guaranteed by a solemn joining of hands.—It being followed by a motion for transmitting the above resolution to citizen Archibald Hamilton Rowan, which passed accordingly.

Sec. Skirving, stated that he had just now received from an unknown hand, 5*l.* for the use of the convention.—Honourable mention in the minutes, to be made of this patriotic donation.

A motion presented and read, signed by citizens M'Cubbin and Bremner, respecting a periodical publication to be printed by the editor of the Gazetteer.

A motion was made by Mr. Sinclair, respecting the appointments of an interim committee at the end of every convention, to call together the delegates on extraordinary emergencies.—These motions were ordered to lie over for the

The dep. secretary having moved a collection, Messrs. Sinclair and Bell were appointed collectors, when 2*l.* 3*s.* 10*d.* ½ was drawn and given to Mr. Reid.

The Sections were

No. 1.—Arch. Binny, Wm. Philip, Robt. Peacock, Wm. M'Cubbin, John Thynne, Eben. Stalker, Alex. Bell, William Eelbeck, Robert Taylor, Wm. Bonthron, Ch. Ritchie, John Johnstone, M. C. Browne, John Gourlay, Arch. Wright.—To meet in Canongate Lodge, Flesh Market Close.—Arthur M'Ewen, Geo. Milne.

No. 2.—Alex. Plenderleith, David Weir, John Inglis, Andrew Newton, John Dun, Wm. Ross, Joseph Gerald, Alex. Aitchieson, John Gilchrist, Geo. Ross, Jas. Foyar, Da. Gowans, Jas. Gartley, Da. Bertie, James M'Kay.—To meet in Liberty Stairs.—Robert Rait.

3rd Division.—Wm. Haddow, Geo. Brockly, Geo. Mealmaker, Maurice Margarot, John Wardlaw, Robert Christie, Jas. Wilson, Jas. Lawson, Gordon Murray, Alex. Fortune, James Bell, James Somerville, Alex. Bremner, Dav. Downie, John Laing.—Mullo's [Ross's], Liberty Stairs.—Jo. Litster.

4th Division.—Rich. Younger, Alex. Mac Kenzie, John Wild, Geo. Cotton, John Grindlay, Chas. Sinclair, John Auchinleck, Thos. Miller, Mitchell Young, Peter Wood, Da. Taylor, Alex. Callander, Walter Hart, Wm. Robertson, Jas. Smith, Jas. Thomson, Sam. Paterson.—In citizen Ross's.

5th Division.—Alex. Reid, Peter Reid, Peter Moffat, Jas. Tweedie, John Hinselwood, Jas. Smith, Wm. Beddie, John Hodge, John Cleland, Robt. Muir, John Stark, Dav. Burn, John Clark, Wm. Campbell, Wm. Romanes, Wm. Fleming.—Liberty Stairs.

6th Division.—John Gartley, Dav. Lyon, Jas. Little, Thos. Noble, Thos. Cockburn, Alex. Scott, John Buchanan, Alex. Knox, Dav. Brown, Jas. Calder, John Wilson, Wm. Urquhart, John Wilson Wright, Wm. Moffat, James Carmichael [Sam. Paterson], John Hepburn.

November, 25.

The convention being divided into sections, Mr. Gartley moved, that the motions should be laid before the sections, and desired the council of the table to condescend on those that were to be first discussed.

After arguing for some time upon this subject, it was resolved simply to read the motions, in the order in which they are to be discussed.—This being done, the business was closed by prayer, after which the convention adjourned till to-morrow at 5.

7th Day's Sitting.—*Edinburgh*, 26 *Nov.* 1793.

Citizen [Mr.] Matthew Campbell Brown, in the chair.

Reports from sections, No. 1, 2, 3, 5 and 6, were received and read, whereby it appeared that a majority of suffrages in the sections, were in favour of Mr. Sinclair.—Citizen Sinclair, however pled that the section to which he belonged, had given their voices for Mr. Clark, but that the secr. was absent.—It was resolved, however, that no verbal reports could be received from any section, whereupon citizen Brown having constituted the meeting by prayer.

Citizen Sinclair took the chair.

The reports of the sections being again consulted, citizen Wardlaw was found duly recommended as assistant, and was accordingly elected.

The minutes being read, Mr. Binny gave in the report of the committee respecting the supporting of the gazetteer—Mr. Scott not being present, the convention ordered the committee, to furnish Mr. Scott with questions proposed to be put to him by the committee, and to answer the same and to report.

The following gentlemen were admitted visitors—citizens John Bernard, And. Ridgely, Wm. Mitchell, Robt. Brockley, Wm. Angus, And. Tweedale, Jas. Muirhead, Alex. Lamont, Adam Melrose, Jas. Taylor, John Hay, John Jennet, Thos. Wyld, Robt. Still, Walter Aitken, Geo. King, John Thorburn, Jas. Cunningham, C. Scott, Mr. Mitchell, capt. Hamilton Dun, John Wilson, Robert Ogle, George Callum, citizen Jardine, George Frier, Jas. Thorburn, Wm. Thomson, Jas. Farlie, Charles Mather, Mr. Steel, Jas. Wai, Geo. Mackintosh, John Robinson, John Kay, John Denholm, John Eelbeck, Alexander Simpson and David Clark.—After [full] long discussion upon Mr. Callender's motion, they referred the same for further consideration till to-morrow.

The collection for to night amounted to 1*l.* 9*s.* 1*d.*

Messrs. Bremner and ——— motion to employ the editor of the Gazetteer, for all papers relative to the convention, was then discussed at considerable length, when a conciliatory motion was made, but at last the original motion was referred to the committee of finance.

Motions read—signed by Messrs. Campbell and Jas. Smith, that it be ordered that the convention shall cause a regular set of books to be kept for the insertion of minutes, motions, and other proceedings, a book of finance, &c. to be at all times subject to the inspection of an intermediate committee.

Moved by John Stark, and seconded by James Carmichael, that the bill of rights be ordered to be printed immediately.

Another motion was made by citizen Alex. Mackenzie, seconded by cit. Walter Hart, that it be recommended to the different societies throughout the country, to copy the bill of rights into their minutes books, as a basis for their proceedings, and as a memento to every good citizen, that they are doing what the constitution avows and admits, in order to prevent improper constructions from being put [to] on their conduct as friends to reform.

All these motions were ordered to lie over to be considered by the sections.

The dep. sec. moved that in future, business shall begin, and the [chairman] president take the chair precisely at 5 minutes past 5, in order to save time, which was unanimously agreed to.

Mr. Gourlay was unanimously elected transcriber of motions.

The chairman having said prayers, the convention adjourned.

8th Day's Sitting.—*Edin. 27, Nov.* 1793.

Mr. Sinclair in the chair.

The reports being given in from all the sections, citizen John Clark was found to have the majority, but he being absent and C. John Gartley being also absent, citizen Mealmaker was recommended, and the question being put, was unanimously elected. —The following visitors were admitted. Messrs. Lyon, Wm. Thomson, Jas. Thomson, Geo. Walker, John Davies from London.

The chairman having constituted the meeting by prayer,

Mr. Mealmaker took the chair.—The reports of the sections as to the nomination of an assistant being read, Mr. Young was found to have the majority, but being absent, Mr. James Wilson was unanimously elected.

The minutes being read, a motion was presented [and read] by Mr. Walter Hart, 2nded by citizen Calder. That no notes be allowed to be taken but

The secretary moved that it should be immediately taken into consideration. After arguing the matter, upon a shew of hands the votes were found equal, 16 being for immediate discussion and 16 for a delay, whereupon the president gave the casting voice for delaying the motion for the consideration of the sections.

Mr. Ellis from Dundee was allowed to speak upon the business.

Mr. Callender's motion being then taken under consideration, amendments were proposed by citizens Downie, Sinclair, Bremner, and John Gartley.

Mr. Margarot pled for adopting the spirit of Mr. Callender's motion, but thought it would be more advantageous to postpone adopting till the conclusion of the convention's business.

Moved by Mr. Margarott that a committee, consisting of the mover, seconder, and those who have moved for amendments of Mr. Callender's motion, be appointed to draw up a motion from the whole that may probably meet the ideas of the whole convention.

After some conversation it was agreed, upon the motion of Mr. Calder, that the vote of the House be put first on the spirit of Mr. Callender's motion; 2dly, on the words of the motion; and 3dly, on Mr. Margarott's motion. —Agreed.

The sense of the House being taken of the first, it carried unanimously *to adopt the motion as to the spirit.* On the 2d, it carried by a great majority not to adopt the motion as so worded; and 3dly, it was resolved that said motion and all amendments be referred as above.

The report of the committee for supporting the Gazetteer was then made; bearing that having received an unsatisfactory answer from Mr. Scott to him by the convention last night, suggest the propriety of the House resolving itself into a committee for the purpose of investigating the affair, and for coming to a final determination thereon.

The convention, after some consideration, found that all the assistance which was competent to them, was to recommend from the chair to each delegate present to endeavour to prevail with their several societies to collect what money they can for the pecuniary assistance required, and the same was done accordingly.

The collection for defraying expences was next called for, and the sum of 1*l.* 8*s.* 0½*d.*

Citizen Jo. Gartley informed the convention, that he was under a necessity to leave the convention and return home. Leave was granted upon the usual recommendation, and upon a motion Dr. Taylor was nominated to fill his place in the committee of and unanimously elected.

The following motions were presented, read, and ordered to lie over.

1st. From Mr. Margarot, and 2nded by Mr. Gerald, that a committee of 5 be appointed for the purpose of drawing up weekly an abstract of the minutes of the convention, in order that the same may be printed, and a copy sent to every country society.

2ndly, From Mr. Archibald Wright, 2nded by Mr. John Johnston, That as ignorance is the great support of oppression, and knowledge its destruction, moved that this convention take some method of enlightening the Highlands of Scotland.

Citizen Taylor was unanimously elected a member of the committee of finance, instead of citizen Cleland, who is gone to Newmills.

9th Day's Sitting.—Convention Hall.
Nov. 28, 1793.

Citizen Mealmaker in the chair.

After the reports of the sections, it was found that citizen John Clark had 10 voices; citizen Romanes, 9 voices; and citizens James Gartley and R. Taylor, had each 8 voices for the chair. Clark and Romanes being absent, it was thought proper to proceed with the election of the assistant; after which citizen R. Taylor was called to the chair, and citizen John Stark from Glasgow was elected assistant, and the following visi-

tors were admitted. Mungo Barrowman, James Jackson, Thomas Smith, Andrew Bain, Thomas Johnston, Alex. Laidlaw, John Morton, Henry Vickars, Robert Gilchrist, Andrew Cockburn, John Bartlett, John Barnet, James Muirhead, [Mr.] Wyld, John Sanderson, John Lamb, John Finlay, John Kelbeck, John Bogie, Thos. Johnston, John Wright, James Fisher, John M'Gregor, John Ingram, Alex. Galloway, Thorburn, Mather Lowrie, Steel.

[A long discussion took place about the [admission of members.]

A Scott gave in the report of fin. respecting the secretaries acco. and the same were ordered to be ingrossed. The committee of finance [and] begged [as they had not suffi-[cient time as yet to examine the accot. par-[ticularly] that they might be allowed to sit again, which was agreed to. And they were ordered to meet on Saturday at 10 o'clock, and the Edinburgh committee of finance appointed to attend them [with their accots.]

A motion presented by G. Ross [to give in] for the committee of union to give in their report was read, and it was answered that they would do so as the business was finished.

A letter from the societies in Paisley was read, where they expressed their approbation of the acts of the convention, and begged that citizen Skirving should act for them as their delegate, which was granted accordingly.

Citizen Sinclair read the amendment upon citizen Callender's motion, as agreed upon by the committee, and it was [resolved] agreed upon the motion of cit. that the House should resolve itself into a committee for its mature consideration. In the course of the conversation, citizen Brown gave [an explanation] a history of the Habeas Corpus act. After an excellent discussion of the question, pertinent remarks, and amendments, [the whole motion passed unani-[mously], the convention was resumed, and the whole as amended being read over, the members stood upon their feet, and solemnly, and unanimously, passed the [motion] Resolutions, as follows:

Citizen Gerald in [a manly] an energetic and animated address, expressed his happiness at the motion passed, and exposed the act of the Irish parliament called a Convention bill; and citizen Brown followed him in a manly speech, and proved the influence of the executive [power] government over the parliament.

Citizen Margarot read and proposed the following motion, viz. That a secret committee of three, and the secretary, be appointed to determine the place where such convention of emergency shall meet.—That such place shall remain a secret with them, and with the secretary of this convention, and that each delegate shall at the breaking up of the present session, be entrusted with a sealed letter containing the name of the place of meeting.—This letter shall be delivered unopened to his constituents the receipt of which shall be acknowledged by a letter to the secretary [prin] preserved in the same state, until the period shall arrive at which it shall be deemed necessary for the delegate to set off.—This motion was seconded by [Mr. [W.] citizen Moffat, and the same was passed unanimously.

The following [gentlemen] citizens were nominated [a secret] a secret committee on this business, viz. Margarot, Jo. Clark, [Skir-[ving] and [Gerald] with the secretary Browne. And they were requested to devise the best possible means of conveying this intimation to those societies, whose views are the same with ours, but may not have delegates at this con.

A collection was made, and 1*l.* 7*s.* drawn.

Mr. Binny complained, that he had received a letter signed by Robert Gilchrist, Wm. Tod, James M'Leay, and Henry Vickers. After reading the letter, and arguing upon the subject, it was resolved that the letter should be burnt, and the doorkeeper ordered not to admit these visitors to any future meeting.

The following motions were read, and ordered to lie over for the consideration of the convention.

1. By [Mr.] citn. Ellis, 2ded by citizen Jas. Wilson, that a fund be raised by subscription for defraying the expense of small patriotic publications to be distributed in the highlands.

Every publication shall bear the figure of a Highlandman in full dress, with target and broad-sword, to attract the attention of Highlandmen. No publication to cost more than ½ a penny.

2d. By citn. Calder and Gourlay, that a committee be appointed to draw up a declaration of the natural, unalienable, and unprescriptible rights of man, and that the same be prefixed to the address to the people of Britain.

3. By citn. Gourlay and Calder, that this convention do order the bill called the Convention Act, passed in Ireland last session, to be published.

4. Citn. Hepburn and Binny, that when any committee is nominated, the convention shall fix the day when they ought to give in their report.

5. By citn. J. Clark and M. C. Brown, that a committee of observation be appointed in London, to give the earliest intimation of any motion of the kind mentioned in the foregoing Resolutions to the different societies.

Convention Hall, 1st year of the British Convention, 29th of Novem. Anno Domini 1793.—10th day's Sitting.

Citizen Taylor in the chair.

The reports of the sections being given in, citizen James Wilson was chosen president, and citizens Moffat and John Clark were elected councillors at the table.

The following visitors were admitted:—John Colvill, James Leighton, Robt. Wilson, Robt. Hardie, George Lawson, Daniel Campbell, James Smith, James Muirhead, John Muirhead, *(Drumond and Wallace, two students)*, George Frier, Wm. Auchinleck, Davies William M'Gill, Robt. Ruthven, Robert Campbell, Solomon Wilson, Robt. Still, Robert Barnet, David Kay, Wm. Scott, James Archer, David Miller, John Merrylees, Thorburn, Mather, Cockson Jardine, John Lamb, James Laidlaw, James Gray, Steel, Kennedy, Galletly, Dickson, Gray, Mitchell, John Kepan, John Ferguson, Robt. Hay, Robert Martin, John Noble, Palmer, Cater, Forrester, David Clark, Ogle, Denoon, Watt, Fraser.

The secretary read a motion [by] presented by M. Margarot and Jos. Gerald for weekly publication of the minutes, which after some discussion, [and] with an amendment proposed by citizen Brown, passed unanimously, and citizens Moffatt, Campbell, and Wm. Ross appointed the committee for drawing up the minutes.

Citizen Margarot gave in the report of the committee of regulations, which were ordered to be printed, and copies [ordered] to be given in to the sections on Monday for their consideration [and refer the printing to the [referred] left it to the committee of publication, [who shall be print the paper for the [convention] to employ what printer they judge proper for printing the matters entrusted with them.

The secy. read John Clark's motion for a committee of observation to be appointed in London. Citizen Margarot stated, that there was no occasion for a committee of that nature in London, as there were several thousand people in that city upon the look out. It was accordingly agreed that this convention should request the London Committee of Correspondence to give the earliest intelligence of what passes in parliament.

Archbd. Wright's motion for enlightening the Highlands, as well as John Gurtley, Bremner's, King's, and Ellis's; and Archd. Wright proceeded to support his motion, which he did by enumerating many of the grievances which our fellow-citizens in the Highlands labour under, with several other excellent remarks of his own. He was seconded by M. C. Browne, who stated one manner of enlisting [the high] soldiers in the Highlands, which is too cruel not to be execrated, and too remarkable to pass unnoticed; that when a man is what they term refractory, they take off his shoes and stockings, and hold his feet before the fire, until excruciating torments make him agree to their nefarious measure.

A collection was made, and 1*l.* 16*s.* 10*d.*½ drawn.

[An anonymous] A letter from a Friend, &c. which had been transmitted to A. Scott of the Gazetteer, was read, containing patriotic sentiments and two guineas. And citizen Taylor presented a guinea from another citizen, whose name he was not at liberty to mention. It was stated [that] by the secy. that a citizen from London was present, who was to give 5*l.* 5*s.* to the convention, when a collection should be made for enlightening the Highlanders. The thanks of the house were unanimously given to the before-mentioned patriots for their donations.

Citizens Wright, Callender, Calder, Gerrald, and Sinclair were elected a committee to take into their consideration the best method of diffusing, by constitutional means, political knowledge in the Highlands.

Citizen Margarot proposed that a subscription should be immediately entered into, to carry the above into effect, and presented one guinea for Gerrald and himself.

A subscription was immediately entered into for the above purpose by several citizens, and the treasurer intrusted with the paper, and the money drawn. The paper is to lie upon the table.

The convention at 10 o'clock adjourned till to-morrow at eleven.

11th day's Sitting.—30th Nov. 1793.

Citizen Wilson, from Strathaven, constituted the meeting by prayer, after which citizen Haddow was called to the chair, when the secretary read a motion, that a committee be appointed to revise each day's minutes immediately on the rising of the convention, for the purpose of sending them to the press, to make hereafter a daily bulletin of the same. Signed M. C. Brown and M. Margarot, the question being put, the motion passed unanimously. The committee chosen last night were appd. for this purpose to be changed by a vote of the convention.

The following visiters were admitted, viz. Wm. Cranston, Wm. Rodger, Wm. Bowie,

The secretary read a letter from James Fisher, wherein he informed the convention, that English was the best language for addressing the Highlanders. That, with others, were ordered to be given to the committee upon that subject.

Citizen Callender moved, that no person should be allowed the honour of the sitting unless recommended by two members, [until] which with amendments, as in the motion itself, passed unanimously.

A commission from the Lawn Market Society, appointing citizen John Davies as a delegate from that society to this convention.

The secretary read a motion of citizen

Harts for the Bill of Rights to be copied into the books of each society. This motion passed as a recommendation for each society to have a copy of the same, and now publishing by W. Skirving, &c.

The secretary read a motion "for publishing the natural, unalienable, and imprescriptible rights of man," which was ordered to be given to the com. of union.

Moved, whenever a committee is nominated, a day should be appointed for them giving in their report [Agreed to] referred to the committee of regulations.

A motion for printing the convention bill passed in the Irish parliament, which was passed over.

It was moved that capt. Johnston should report some circumstances to the convention, for which purpose the house resolved itself into a committee, when he read the an accot. of the trial and sentence of D. Holt, for reprinting the Duke Richmond's and Wm. Pitt's resolution for a parliamentary reform. After which the chairman being replaced, the secretary moved that capt. Johnstone should be allowed the honours of the sitting.

Citizen Wilson from Strathaven, and Haddow from Hamilton, requested leave of absence should be granted to them, and moved that all the [societies] delegates who had left the convention should receive letters to return immediately and remain at their posts until the important business which was daily introduced into convention should be properly discussed. A. Scott proposed that he would give a circular letter to the delegates in the Gazetteer gratis.

A motion of Willm. Campbell's for a regular set of books for the insertion of minutes, motions, &c. and other proceedings, a book of finance for the inspection of [finan] an intermediate committee, which passed with this amendment, that every person who made and seconded a motion should subscribe his or their names in the book for copying in the motions that have passed.

A motion from Alex. Fortune for refuting charges made by aristocratic authors was referred to the committee of union.

A motion from Mr. Margarot for every delegate to subscribe the minutes as a mark of his [approbation and] resolution to abide by them which lays over for consideration of the convention of monday.

Citizen Brown [last] being appd. last night to draw up an answer to the letter which the convention received containing 2 gs. read his answer, which was approved of, and ordered to be published in the Gazetteer.

A motion of D. Downie to fine those members who did not attend their sections. The order of the day was called for.

A motion for drawing out a scroll of a petition to parliament being read, the order of the day was moved upon it.

Four-tenths of a collection was made, and the convention [moved] adjourned till 5 o'clock on Monday.

Monday, 2 *Decem.*, 1793.

1st Year British Convention.

12th day's Sittting.

Citizen John Clark Mason, in the chair, and citizens Downie and Romanes assistants at the table, read the minutes of last sitting. Upon it being moved that citizen Smith's motion for petitioning parliament be discussed immediately. It was agreed that citizen Smith should withdraw it and present another.

The motion presented [yesterday] on Saturday by citizen Margarot was read by the secretary, when citizen Margarot rose, and supported it as well as citizen Callender, who saw the necessity of people subscribing to their principles, [and stand] citizen Brown did not see the motion necessary, as any member of [it] the convention would be liable to the penalties incurred by an act of the convention altho' 40 miles absent from it at the time it passed.

Citizen Margarot pled that no man was bound for any act of the convention at which he was not present.

Citizen Brown defended the opposite principle, and illustrated his argument by the case of a peer who was hanged for being in the company of some poachers who killed a gamekeeper, tho' his lordship had left them before the deed was perpetrated.

Citizen Margarot presented an amendment of his motion which was seconded by citizen [Brown] Callender, and approved of by citizen Brown, who defended the legality of our meetings and the constitutional principles upon which we meet, and recommended unanimity as the basis of our strength and success.

Citn. Skirving insisted that all the members both of the convention [of] and of the primary societies should subscribe a solemn league and covenant.

Citizen Callender considered the whole members to be already bound.

Citizen Gerald pled for liberality of sentiments, and compared the people and their enemies to the worshippers of the true God and Baal. He afterwards read some paragraphs from the Edinburgh Herald, with suitable comments and compared the constitution of 1788 to a dead horse. He [defended] showed the insipidity of the title gentleman, and the propriety of the term citizen;—remarked the impropriety of the mode of promulgating our laws by restricting them to be sold by one printer, and publishing them in the Saxon character which few can read.—[He] After many other remarks humorous and serious, he concluded by observing that the signature assumed by the author A. B. was very proper as his knowledge did not seem to go beyond the two first letters of the alphabet.

Citizens [Moffat] Newton, Mealmaker, and Aitchieson expressed their doubts of the necessity of the measure recommended in the amendment which Mr. Browne removed. Citizen Aitchison said he was satisfied.—Citizen Jas. Smith thought it savoured too much of the measures of Ministry in fishing for loyal addresses.—Citizen Mealmaker was of the same mind.

Citizen Margarot defended the measure as a good precedent for future legislators.—Citizen Skirving also pled for the motion, [and] insisted that it was proper on all occasions to [consult] take the opinion of the primary societies, and considered the convention as only a committee of the people.

Citizen Callender objected to the measure as unnecessary, and acknowledged himself wrong in having seconded it.

Citizen Margarot showed several advantages that would flow from passing the motion, particularly in stopping the mouths of our enemies.

Citizen Philip said, whatever became of the motion, he would report to his constituents.

Citizen Browne insisted that as citizen Callender had objected to the motion he had signed, he begged his name might be inserted in his stead.

Citizen Margarot pled in favour of the motion, that the approbation given by many thousands of their constituents in London, Sheffield, Norwich, Leeds, &c.

The motion being put to the question was agreed to with one dissentient voice, who afterwards withdrew his opposition.

Citizen Brown read a spirited advertisement from the Nottingham society, inserted in a Sheffield newspaper.

Citizens Mealmaker and James Smith being [were] appointed collectors—nineteen shillings and three-pence three farthings were drawn and delivered to Mr. Reid the treasurer.

A motion was made by citizen Scott and seconded by citizen Aitchieson, that the convention shall pass some resolutions respecting the late unprecedented and unwarranted infringements on the freedom of the press, particularly the arbitrary sentence of Judge Wilson against Mr. Holt for reprinting the d. of Richmond's and Mr. Pitt's plan of reform.

The tickets being collected, the sections were divided as follows:

No. 1.—John Noble, James Calder, James Tod, Peter Moffat, James Wilkie, John Wilson, John Auchinlech, David Brown, Archd. Binny, Wm. Romanes, Jas. Foyer, Willm. Fleming, Mitchel Young, M. C. Browne Thomas Kennedy, Wm. Robertson, [Mr. [Cockburn] Inglis, Davd. Lyon, Robt. Orrock, [H. Johnston] Dd. M'Culloch.

No. 2.—Wm. Johnston, Wm. Eelback, Peter Wood, John Wilson, Alex. Reid, Alex. M'Kenzie, James Smith, Geo. Ross. John Clark, James Lawson, John Muir, David Downie, John Thynne, A. Knox, D. Taylor, Thos. Cockburn, Jo. Johnston, Jo. Grindlay.

No. 3.—Geo. Mealmaker, Willm. M'Cubbin, Rob. Christie, John Davies, Alex. Fortune, Will. Bonthorne, Alex. Aitchieson, Maur. Margarot, Willm. Philp, John Wyld, Peter Hunter, James Bell, John Thomson, Andw. Newton, Willm. Campbell, Wm. Moffat, David Bertie, Jas. Smith, Paisley.

No. 4.—Archd. Wright, Jos Gerald, Alex. Scott, Geo. Brockly, Jas. Thompson, John Dunn, Dav. Gowans, Jas. Carmichael, Willm. Ross, Alex. Bremner, John Gourlay, John Wardlaw, John Buchanan, Jas. Somervail, Geo. Callender, Thos. Smith, Alex. Bell, James Tweedie, George Waddell.

Citizens Alex. Scott and A. Callender moved, that the British convention take under consideration [whether they] a resolution passed at last meeting of the Scotch convention, to petition the Commons House of Parliament for a parliamentary reform.

Citizens James Smith and Peter Wood moved, that this convention take under consideration, whether, after the contemptible manner in which the late petitions for parliamentary reform were treated, they shall again petition for reform, or at what period they should recommend the same to their constituents.—The meeting concluded with prayer.

13th day's Sitting.

The meeting elected citizen John Wilson president for this day's sitting; and citizens Fortune, Young, and Wardlaw, assistants at the table.

The secretary read a commission from Perth, appointing citizens Malloch and Smith delegates for the societies in that town, which appointment the convention approved of unanimously.

The secretary having read last night's minutes, the convention proceeded to business.

Citizen Brown, of Sheffield, produced a commission from the Leeds Constitutional Society, appointing him their delegate, which was received and approven of by the convention.

The convention, upon a motion by citizen Campbell, recommended to the societies to meet as usual, in their respective societies, for receiving new members.

The committees were called upon for their reports. The excuse from the committee of union was received. The committee of regulations produced some additional rules for the consideration of the convention, which were [submitted] reported citizen Margarot, one by one, after the convention had agreed, by a vote, to postpone the final consideration till the whole should be printed, and laid under the consideration of the sections.

After hearing Mr. Margarott, the additional regulations were ordered to be printed, and laid before the sections to-morrow.

Upon a motion by Mr. Skirving, that the list of subscriptions for promoting political knowledge in the Highlands, should be re-

mitted to the committee on that business, be promoted in such manner as they shall judge necessary. The convention accordingly remitted the same.

Mr. Scott's motions and resolutions being read, citizen Aitchieson was called upon, in absence of citizen Scott, the mover, to defend them, [but] who said, that his sole motive in [signing them] seconding them, was, that they might get a fair hearing.

Citizen Margarott opposed the business, as foreign to that which we were met upon, and thought it unnecessary to attempt to lop off the branches, while [citizen Skirving] we were endeavouring to

Citizen Callender defended the resolutions, as necessarily connected with the business before us.

Citizen Skirving insisted, that we had no proper data, or official information, to proceed upon.

Citizen Aitchieson argued, that the newspapers, however false in other respects, could not err in relating matters of this kind, and proposed, that as Mr. Scott was absent, the farther consideration of the motion and resolutions should either be postponed till to-morrow evening, or remitted to a committee.

Citizen Margarot had no objection to a delay, but urged many reasons why either no notice should be taken at all, or only a slight general resolution passed, and mentioned

Citizen Brown argued, that the persecution of individuals served the cause of reform, and therefore it would be improper to stop them in their present career.

The president having put the question, to proceed or delay the consideration of the motion, it was unanimously agreed to delay it till to-morrow.

Citizens Wild and Jo. Clark being appointed collectors, eighteen shillings and nine-pence were collected.

A commission of delegation from Paisley, in favour of [Mr.] citizen James Smith, was read, and his name ordered to be enrolled.

The new delegates from Paisley and Perth were added to the committee of finance, who appointed to meet at Ross ¼ past 3.

Citizen Aitchison moved, that the office of dep. sec. be abolished.

Citizens Gordon, Murray, and John Wardlaw, moved, that the sentences of different courts, against our brethren in the cause of liberty, should be printed and published to the world, that the world may judge of the merits of these merciful sentences.

Citizen Margarot moved an ironical amendment of C. A. Scott's motion.

Edinburgh, 4 Dec. 1793.

14th Sitting of the B. Convention.

No reports being received from any of the sections, save one, after prayers by the president of the former sitting, Mr. M'Cubbin was unanimously called to the chair; James Wilson, from Paisley, to the council table.

Read the minutes of last sitting. Called for the reports, if any, from committees. M. Margarot begged leave to bring in a motion, to the effect that the moment of the illegal dispersion of the present convention, be considered as our summons to repair to the place of meeting appointed for the convention of emergency by the secret committee, and that the same motion be considered this evening.—Leave was accordingly granted.

The convention then heard the only two motions on their table read, which regarding the same matter, and it being objected that the business of these motions was to be taken up to-morrow evening, after some conversation it was carried, by a vote of the house, to delay further conversation till to-morrow evening.

M. Margarot being prepared to bring forward his motion above-mentioned, the same was taken under consideration, and is as follows:—

That the moment of any illegal dispersion of the present convention, shall be considered as a summons to the delegates to repair to the place of meeting appointed for the convention of emergency by the secret committee, and that the secret committee be entrusted to proceed without delay to fix the place of meeting.

The convention having considered the motion fully, unanimously resolved the same, and appointed the secret committee to proceed as desired.

Citizen Scott brought forward his moved resolutions, relative to the severe sentences passed against Daniel Holt, the printer, &c. A commission to citizen James Boyd, from the Friends of the People in Kilmarnock, to represent them in this convention, was read and sustained. An amendment was proposed, by way of substitute to C. A. Scott's resolutions; as was also another resolution, by way of substitution to same, was offered by cit. Margarot, and read.

After some conversation, the convention, upon a motion by the sec. agreed to refer the motion, with amendments, to the mover, the amenders, together with citizens Brown, Gerald, and Callender, and appointed them to report against Saturday first, at the farthest.

Read the following motion by cit. Callender:—

(Blank.)

Accounts of the Proceedings of the Convention, after it had assumed its *second denomination*, were published in Nos. 78, 79, and 80 of a newspaper called the Edinburgh Gazetteer, and were admitted as evidence against Skirving and the others. Lord chief baron Dundas has kindly furnished me with the above-mentioned numbers of the Gazetteer, from which I have extracted the accounts in question.

(Edinb. Gaz. No. 78.)

"British Convention of Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments.

Tuesday, November 19.—W. Hart in the Chair.

"After the roll was called, new commissions read, and additional delegates added to the list; it was resolved, on a motion by M. Margarot—

"That a committee be appointed to draw up rules for the internal government of the convention.

"And, on a motion by C. Sinclair—

"That the resolutions presented by lord Daer to the first general convention be remitted to that committee.

"J. Gourlay moved, that lord Daer be called to the chair, which was seconded by the deputy secretary, but opposed by lord Daer himself, and by J. Gerald and C. Sinclair, as favouring too much of the spirit of aristocracy.

"Upon which—

A. Callender was called to the chair.

"Several motions for appointing committees having been made—

"Lord Daer observed, that to avoid an aristocratical dependence on committees, it would be better to delay appointing any until a proper mode of electing them was agreed upon.

"Resolved,

"That all committees which may be hereafter appointed, shall sit in the forenoon, and the convention in the evening.

Wednesday.— ——— Jackson in the chair.

"Lord Daer read the report of the committee appointed to draw up a plan for the internal police of the convention.

"The convention then proceeded to the discussion of the clause of the report which proposed to form the members into a number of small sections or divisions.

"Lord Daer read it a second time, and made observations explanatory of the plan. He said, that in considering a method by which the convention should conduct their proceedings, the committee had not been guided by the narrow principle of forming a plan suited solely to the present meeting; they had endeavoured to present not what might be proper for this convention only, but for others which may be more respectable in number, and of greater importance to the country. His lordship observed that this method of dividing the convention into sections of a few members each, would be found of the greatest utility. It was very properly resolved, that no question should be determined on the same day on which it was proposed. This was an excellent rule, but it would not sufficiently guard against the evil it was intended to prevent. People would frequently be as much taken by surprise on the second day as on the first, but by debating in the sections every question before it came to be discussed in the convention, the members would understand the subject clearly, would form their opinions in their different sections, and come to the convention in the evening determined how they were to vote.—Thus a great deal of useless discussion would be prevented, and the proceedings of the convention conducted with greater regularity, by having every question previously debated.

"His lordship observed, that this measure would likewise be of great advantage in bringing forward individual ability. In certain classes of mankind, which had, of late, by some persons, been very much despised and abused, great abilities were frequently to be found. Many would deliver their sentiments freely in small companies, who cannot in a public meeting. Thus the practice of public speaking would be promoted, diffident members would acquire a proper degree of assurance, and be able to deliver their sentiments with ease in the convention. He concluded with saying, that it might, perhaps, have a good effect in another view; those who were exceedingly fond of speaking would have an opportunity of satisfying themselves before they came here, and so give less interruption to the business.

"A very long and interesting debate took place upon the question.

"It was observed by Mr.C. Brown, of Sheffield, and afterwards repeated by lord Daer, that the divisions would be of great use in choosing committees. In large assemblies whenever a person was proposed for a committee-man he was, however unfit for the office, most commonly elected, because it would be considered invidious in any one to rise and make objections, especially before the person's face. In the divisions this difficulty would be done away. There the merits of every person proposed could be scrutinized with freedom, and their character and abilities inquired into.—It would be found, therefore, that the appointing of proper committee-men was one of the greatest advantages of this measure.

"After the subject had been amply discussed, it was resolved——

1. "That the convention shall be formed into sections.

2. "That each section shall consist of fifteen members.

3. "That they shall meet every day at 11

o'clock A. M. in places appointed by themselves.

4. "That they shall be chosen by lot.

5. "That they shall be renewed once a week.

The convention then proceeded to establish the mode of choosing committees; and after a long discussion it was determined, that they should be chosen in the following manner, viz.

1. "That the number of committee-men shall be fixed by the convention.

2. "That each section shall make out a list of names equal in number to the committee proposed, and affix to each name the number of voters.

3. "That from these lists the secretary of the convention shall make out a *leet*,* consisting also of the same number as the intended committee.

4. "The priority of the leet shall belong to those who have the greater number of individual votes.

5. "That the leet so formed shall be read by the secretary, and each name on the leet sustained or rejected by a vote of the convention.

"It was next resolved, that a committee should be appointed for drawing up a plan of union between the Scottish and English societies for parliamentary reform: and it being determined that this committee should consist of thirteen persons, the divisions were ordered to return lists containing that number of names next day.

Thursday,—M. Margarot in the Chair.

"The sections gave in the lists for the committee of union, which was appointed agreeably to the regulations established yesterday.

"When the election was concluded, the president observed, that this committee was appointed for a most important purpose, and which would produce an event unparalleled in the history of mankind, viz. the union of the two countries, without the interference of government.

"A. Callender. As this is a business of so momentous a nature, I propose that the committee be empowered to request the assistance of every member who can give any information which may be useful in drawing up the plan of union.

"M. C. Brown.—I agree that it is very proper for the committee to get all the information possible from their fellow-citizens; I therefore move, that the convention be formed into a general committee, so that the members may have an opportunity of delivering their sentiments as often as possible on the subject.

"This motion met with some opposition.

"Buchanan proposed that the committee should draw up a plan, give it into the sections, and let it come before the convention in the proper form.

"J. Gerrald.—If we wish to arrive at truth, it is necessary that we have as much information as possible on the subject in which we are engaged. The conversation of this meeting, though desultory, may afford many useful hints to the committee. Before we sit down to write, it is proper that we have prepared our minds for the subject. In a business of this nature, he who has only his pen in his hand, will be but of little service; and a wise man has told that in many counsels there is much wisdom. I therefore second citizen Brown's motion.

"The question being put to a vote was carried in the affirmative.

General Committee.—M. Margarott recalled to the chair.

"M. C. Brown.—I beg leave to observe, on the behalf of my constituents (who, though stated to the convention at the lowest calculation of 2,000, because we would avoid the appearance of exaggeration, are, I can assure you, not much under 5,000), that a union with their brethren in Scotland is the wish nearest their hearts; and, as they have delegated me to represent them in this convention, they will consider themselves bound by what passes here.

"I would suggest merely as a hint, which every citizen here may revolve in his mind, to consider how conventions may be brought to produce the greatest possible advantage to the country.

"It may be proper to determine, whether the next convention is to be held in England or not. I throw out this hint that we may turn our minds to that object as soon as possible; but whatever place is determined on, I doubt not that it will be numerously attended, and, if proper time had been given to the Sheffield society, in place of having only one delegate at this convention, I am convinced they would have had at least forty.

"I have not a doubt if next convention should be held in England, that it would be agreeable to our brethren in this country. Scottish citizens may wish to meet the friends of freedom on English ground. But whether it be held in England or in Scotland, I hope we shall always meet with hearts united to promote the cause in which we are engaged.

"———Hastie.—I have no objection to the proposition of citizen Brown, that the next convention should meet in England; but I suppose the most material thing is to claim our rights; the spot of ground on which we do this I apprehend is of little moment. Englishmen and Scotchmen have declared for universal suffrage and annual parliaments; for to obtain those objects they have united; they will proceed until they are secured, or yield the pursuit only with their lives.

"If any other place is to be fixed for the

* *Leet* is a Scottish word, signifying a list drawn up for election.

meeting of the next convention, I would propose to hold it on the borders of England and Scotland.

"A. Callender. — This is a transaction which I think never occurred before, the free and voluntary union of the people of two countries to recover their common rights—rights of which they were deprived at the same period: I mean at the union of the two crowns. For no sooner had James got himself seated on both thrones, than he began to violate the liberties both of the English and Scotch, and used every endeavour to render himself absolute.

"We must publish the plan on which we are united to the world; we must prove to the people that our meetings are for their good, and that it will be to their advantage if we obtain the objects we have in view. We may then proceed boldly in our course, and be certain, that in the end we shall be crowned with success.

"J. Buchanan.—I propose that we shall state what are our rights, that all the societies shall enter into a solemn engagement never to relinquish their proceedings until they have obtained those rights, and that no partial reform given either to England or Scotland shall be satisfactory.

"J. Gerald.—Whatever difference of opinion may arise within these walls, I suppose we have all one common object in view.—We all live under the same form of government —have the same grievances to complain of, and seek the same redress. It was justly observed by citizen Callender that soon after the union of the crowns of England and Scotland, the people of both countries were deprived of some of their most valuable privileges. It was from that period that the greatest encroachments began to be made on public liberty; but if that union has operated to rob us of our rights, let it be the object of the present one to regain them. If the event exists for our shame, as it has existed for our chastisement, let it also exist for our instruction.

"Some doubts have been introduced respecting our right to universal suffrage.—I apprehend that we may justly claim it as our inheritance from nature; but we can with confidence, because we can with truth, appeal to antiquity for our title to this right; and it will be found to have been exercised by our ancestors in its fullest extent. It must be confessed, however, that in the early periods of our history, there existed a body of men called slaves; happily this distinction does not exist in our days; and if there are political slaves, it is time that they should exist no longer.

In establishing the right of universal suffrage, the convention may perhaps give offence to the satellites of despotism; but while we can establish our demand on the immutable principles of justice, we may at the same time prove that it is perfectly agreeable to the spirit of our constitution.

"Under the Saxon government, the people met frequently in the different divisions of the country, in assemblies called Folkmotes; there they deliberated; there every man had a voice in choosing his representative; the concurrence of the people was necessary to the administration of government, and they obeyed the laws which they themselves had made. The king of England used to sit in the Folkmote; and I believe it would be more to his own advantage if he sat there now.

"In the progress of time, however, great deviations have been made from the original purity of the constitution, and the national representation has been supposed to be sometimes influenced by motives, not altogether congenial to the happiness of the people. Human nature is so constituted, that every man is inclined to pursue his own individual interest in preference to that of others. If you appoint a man to act as your agent, and make his situation such that he has every temptation to betray you, without incurring the danger of being called to an account, the probability is that he will sacrifice your interests to his own. It is therefore, that a free suffrage of the people is what every man ought to desire, as that alone can make the interest of the representative and his constituent the same. The great art of government, I apprehend, is this, that all should be governed by all; but unhappy is the country where men are called upon by every interest to act in opposition to their duty.

"Much of late has been said about meetings of mobs—I apprehend that no meeting of the people can be called a mob if their deliberations be directed towards the public good; but if men meet for an opposite purpose, for promoting the misery or the destruction of the human race, though they should sit with crowns on their heads and sceptres in their hands, they are truly a mob.

"Were all mankind to assemble in public meetings, one of two things must follow, either they will behave properly or improperly; if properly, their meeting will tend to do good; if improperly, it carries its own cure along with it. The people will be soon brought into a better method, by a sense of self-preservation, by which they will correct the errors into which they have fallen.

"It may occur that the voice of the people will be wrong when their understandings are perverted by priestcraft, or darkened by political superstition, like the voice once heard in Jerusalem, of "crucify him, crucify him," when that nefarious deed was perpetrated, at which the Sun hid his head in darkness and in blood. But were the tyrants of the earth as solicitous to enlighten, as they are to punish those unfortunate subjects; were governments to instruct the poor instead of hanging up their bodies on gibbets, the voice of the people would then be the voice of God.

"By the Norman conquest, or rather robbery (for that transaction, like every other, is to be considered by its consequences) the right of voting was greatly curtailed; but surely we can, with great propriety, meet to petition parliament for the restoration of the right of universal suffrage; a right which is so necessary to the just administration of government; for if any man comes and tells me that I must pay a tax to which I never consented, neither by myself nor my representative, What am I to think of the legality of his claim? Whenever money is taken from the people by a military power, or by any other authority not delegated by themselves, call that government what you will, it is a government of force—it is the sword which governs. The right then of universal suffrage, of which we have been so unfortunately and unjustly deprived, I repeat, is not only a national right, but also an inherent principle of the constitution. In the early periods, every man had a vote for his representative. With some little variation, the practice continued for ages; it underwent considerable alterations at the conquest; a period at which the goodly fabrick of Anglo-Saxon government was undermined, and the structure of tyranny erected in its stead.

"It has been observed, that the revolution of 1688, did not produce the advantages which might have been expected from such an event. It is true, that at the revolution, universal suffrage was not dispensed to the people with that liberality which it ought to have been; but still the present form of government, in my opinion, no more resembles the revolution, than a dead putrid carcase does a living body.

"The principal advantage of the revolution was, that it made the chief magistrate responsible for his trust, by establishing the right of the people to alter the line of succession to the throne. The house of Hanover, if they are wise, will not be averse to revolution principles; for it is in consequence of those principles, that the present monarch reigns in Britain.——A worthy member, I believe, with the best of intentions, called another to order, and said he was going too far;—no man, I apprehend, goes too far, unless he goes beyond the rule of right—unless he violates the truth. If the members who compose a government abuse their trust, may they not be resisted? And if there existed a right in any preceding generation to amend the constitution, can it be said, that that right does not equally belong to the present?

"Let us then endeavour to instruct the people in their rights, and to inform them of our views and our intentions, they will come and sign our petitions, and we shall be enabled to send them up subscribed by a majority of the people. The voice of the people will be heard, whenever it is spoken in the language of truth, and by a number so respectable as to command attention; and it will soon have that respectability, if we have reason on our side.

"As to the manner in which the union is to be formed, we may find precedents for it in our early history; but the first thing to be done is to enlighten the people—endeavour to diffuse the principle on which you act. When you have got a sufficient number in every district, establish a correspondence among them—show them the necessity of uniting in the common plan of co-operation, then the people assembled in the different departments of the country, will resemble the ancient Folkmotes, and will speak in language too reasonable to be confuted, and too peremptory to be refused.

"The manner in which they should organize themselves, is of very important consideration; and they ought to be particularly careful what persons they choose for delegates to the next convention;—let them be plain men, such as I see here—none who have ever breathed the pestilential air of a court, or bowed the knee to aristocracy.—Let us renounce all attachment to parties, and be no more deceived by the pretended patriotism of the great. During the American war, reformers and patriots sprung up like mushrooms, without any diminution of public burthens—Like mushrooms they were short lived, for they sprung from a soil of dung—a *hot-bed* of corruption. Pitt has succeeded to Fox, and Fox to Pitt, without any reform being obtained: but let us no longer put faith in such men, unless they bring forward a reform founded on annual parliaments and universal suffrage—that only is the kind of reform which will satisfy the people, and which they will never cease to claim as their due. Depend upon it, whenever the leaders of parties see that the people are determined upon having their rights, they will not only endeavour to swim along the stream, but will strive to direct its course—TRUST THEM NOT—they did not come forward in the hour of public danger—why then should they be trusted, when they seek your favour only for personal convenience?

"The city of York has been proposed as a proper and centrical place for the meeting of next convention; but I can assure you that city is the seat of a proud aristocracy, the seat of an archbishop; however, I would not object to going there—as the Saviour of the world was often found in the company of sinners, let us go there for the same gracious purpose, to convert to repentance. The borders of this country and England, was mentioned by another member, and I should rather prefer some place there; for we should have this pleasing reflection, that we met for promoting philanthropy and peace, on the ground which had been often drenched with the blood of our ancestors. Let us then, fellow citizens, unite heart and hand to bury the hatchet of natural antipathy, which the wicked policy of Courts once instigated us to

wield; let us brighten the chain of national friendship—let there be no other wish either among Scots or English, than to obtain freedom, and no other rivalship than who shall best deserve it.

"The Convention resumed.—M. Margarot, called again to the chair.

"C. Sinclair read some of the articles of the report of the committee of organization: and it was resolved,

"That the preses shall be chosen by the sections: each section returning one name every day, and the priority to belong to the person who shall have the greatest number of votes.

"That there shall be three assistants, one of whom shall go out of office every day in rotation, and be replaced by another person, who shall be elected in the same manner as the preses.

"That the preses, secretary, and assistants, shall form the council of the table.

"*Friday.*———Hastie in the chair.

"C. Sinclair reported the farther progress of the committee of regulations, upon which the following resolutions were passed, viz.

"That as soon as possible, after that committee shall have completed their report, each section of the convention shall be furnished with a printed copy.

"That the strangers shall send in their names to the council of the table, previous to admission.

"That strangers shall sit by themselves, on seats appointed for that purpose.

"That no stranger shall upon any account, sit among the members, under the pain of exclusion.

"The committee asked leave to sit again. Granted.

"It was moved by———Newton, that the committee should appoint a day of solemn fasting, prayer, and humiliation, to be kept by all the friends of reform, in Great Britain and Ireland.

"This motion occasioned a very warm debate, which occupied a great part of the time of the meeting.

"J. Gerald moved the following amendment, which, in a great measure, conciliated the different opinions, and was agreed to.

"That it be recommended to the individual members of this convention, and to all the friends of liberty, in Great Britain and Ireland; to invoke the assistance of God Almighty, the common father of all, in the cause in which we are engaged.

"It was next resolved,

"That a committee be appointed to inquire into the state of the finances.

"That it shall consist of five members, and be open.

"*Saturday.*———Urquhart in the chair.

"In consequence of several country delegates having signified their intention of going to their respective places of abode this evening, and returning to their duty in the convention on Monday; and as the committee of union could not possibly finish their business until the end of next week; the following motion, moved by W. Muir, jun. and seconded by M. Margarot, was submitted to the convention; that such delegates as intended to return home, might be enabled to inform their constituents, that the union of the societies of England and Scotland, had actually taken place.

"Moved, that in order to manifest that our principles on the great object of parliamentary reform, respecting universal suffrage and annual parliaments, are one. We are of opinion, that a vote of the convention should, without delay, determine the unity of the members of the two nations assembled for that great and interesting purpose; in order to satisfy our constituents, and to show to the world that we are determined to prosecute, by all legal and constitutional steps, the two important objects above mentioned, until we have obtained the end of our association.

"This motion passed unanimously, and the secretary proposed that the convention should give their assent to this important motion in a more solemn manner, than their usual method of a show of hands.

"A. Scott proposed, that the convention should express their approbation of this motion, by all the members joining hands.

"This being agreed to, all the members rose up, and joined hands round the room.

"The President then addressed the convention as follows:

"Fellow citizens;—The union which we have now accomplished will, I hope form an important epoch in the history of our country. —The event, indeed, is unprecedented; it is the voluntary union of the people of two countries long separated by ancient prejudices, and unnatural animosities, which have been cherished by ignorance, and fomented by the artifices of courts, and the intrigues of faction. May this solemn emblem of the union of the people, of North and South Britain be ever impressed on their minds: may they consider themselves henceforth only as brethren, and be stimulated to a firm and manly adherence in defence of their mutual rights.

"M. C. Brown.—Permit me, citizen president, to remark, that I hope the distinctions of North and South Britain will be soon forgotten, and that these countries, shall only be known by the common name of Britain.

"C. Sinclair.—Citizen president, I beg leave to make a motion which naturally arises from that resolution which has just now so cordially and solemnly been passed. It is, That this convention shall, from henceforth, be called

"The British Convention of Delegates of

the People, associated to obtain Universal Suffrage, and Annual Parliaments.

"Agreed to unanimously.

"C. Sinclair.—I believe there are none here who have not felt the most lively sensations of joy and affection, on partaking in the solemn transaction which has just now taken place; but let us not forget those who are afflicted in a neighbouring country. Let us remember our brethren in Ireland. They have a sham parliament which lords it over them, and they cannot have the pleasure of meeting as we do now. I have therefore drawn up a motion respecting them, which I shall now read to the convention.

"The motion was read, and being considered of very great importance, was ordered to lye over till to-morrow evening.

"A committee was appointed to take into consideration, a plan for assisting and supporting the Edinburgh Gazetteer.

"*Monday, Nov.* 25.—M. C. Brown in the chair.

"The first motion which came before the convention for discussion this evening, was as follows:—

"That no motion having a tendency to excite a discussion on religious subjects shall be admitted in this convention.

"It was stated, that this motion was brought forward in order to prevent a debate of the nature of that which took place on Friday last, in consequence of the motion of Newton, from occurring again. But it being observed that the convention might reject any motion proposed, they could avoid religious discussions, by throwing out such motions as might have that tendency.—Passed to the order of the day on this and several other motions on religious subjects.

"Read again and passed, C. Sinclair's motion respecting the United Irishmen, viz.

"The British Convention of Delegates of the People, associated to obtain universal suffrage and annual parliaments, taking into their consideration the oppressed state of their brethren in Ireland, and the unconstitutional act of the last session of the parliament of that kingdom, called the Convention Act; and seeing, with indignation, that by it the people of Ireland were deprived of those rights cheaply purchased with the blood of our common ancestors, and which are confirmed and secured to us by the great charter of our liberties. Resolved,

"That all or any of the patriotic members of the Society of United Irishmen of Dublin shall be admitted to speak and vote in this convention.

"Dividing the convention into new sections, agreeably to the plan adopted on Tuesday, occupied the remainder of this sitting.

"*November* 26.

"Read the report of the Gazetteer committee.

"The following motion of A. Callender came under the consideration of the convention.

"Moved, That in case the minister, or any other member bring into the House of Commons a motion for a Convention Bill, as passed in Ireland, for preventing the people from meeting according to their just rights by the Revolution, the same motion shall be noticed to the delegates of the respective societies immediately to meet in convention to assert their rights.

"M. Margarot.—This is an excellent motion, and the event which it alludes to ought to be the Tocsin to the friends of liberty to assemble. It seems, however, to be imperfect—it does not mention any place of meeting; neither does it specify the time when the delegates are to assemble, for the word 'immediately' is indefinite, and will not convey the same meaning to persons residing in different parts of the country. By those who live near to the place of meeting, it will be understood that they are to repair the next day; by those at a greater distance within a few days; and by those still farther off, a week after such information is received. But the committee of regulations have, in their report, an article of the same purport, which, in my opinion, is preferable to our friend Callender's motion; and as this motion comes properly under the chapter of regulations, I wish that it were referred to that committee; I therefore move, That the report be read, that the convention may judge whether the article I allude to sufficiently provides for the intention of the motion now before the convention.

"[The part of the report referred to by M. Margarot, and which had not as yet been decided upon by the convention was read: it proposed to invest an intermediate committee with the power of re-assembling the convention on particular occasions.]

"M. Margarot.—I believe that the convention will be convinced, that this clause of the report of the committee of regulations, comprehends the spirit and intention of Citizen Callender's motion, and also extends farther, in as much as it provides for a number of cases equally dangerous to liberty, as a Convention Bill. It will be found, also, that this business of calling a meeting of the convention, had better be entrusted to a select committee, appointed for the particular purpose of watching every act which may militate against the rights of the people: and I maintain, that the proper place for this motion to appear, is among the regulations of the convention.

"M. C. Brown.—I cannot sit in this assembly, and hear any measure proposed, which appeared to me improper, without putting in my protest against it. The motion of citizen Callender, is, I think, infinitely better than that of the committee. And what does the report go to? That there shall be an intermediate committee, which, on certain emer-

gencies, shall call a convention: Now what is the consequence? This committee can never call the delegates together but by letters, and those letters can never be certain of arriving; for our enemies are numerous and powerful, and it may be supposed, that they would not hesitate on such an occasion, to open all letters at the post office, and stop those of the committee, for the purpose of preventing the meeting of the convention.

"I agree, that the wording of Citizen Callender's motion, is not altogether so proper as it might have been; it is not sufficiently explicit, and I think it requires some amendment in that respect: but the great difference between it and the report of the committee is this:—if a resolution of the convention stand in the form of the motion, nothing can prevent the delegates from knowing when they are to rally; on the contrary, if it stand in the regulations of the committee, it never can be made known to us, but through that medium, and as the letters of the committee must be sent by post, their arrival will, in this case, be totally uncertain.

"With regard to the time, it has been observed, that the word immediately, is indefinite, and it is so in a certain degree, but it evidently carries this meaning with it, as soon after as possible. It was also objected, that there is no place of meeting stated in the motion, but I think my friend Callender was very right in not mentioning any place; it would have been presumption in him to dictate to the convention, in a matter of such importance.

"But what I would most particularly impress on the convention, is this, to consider of the method, by which, we can be best brought together, on such an important occasion; one of the methods proposed, appears to me liable to miscarriage and interruption, the other is fixed and certain.

"The greater part of the members spoke in this debate, which continued all the evening, and the meeting adjourned without coming to any decision.

"*Wednesday.*—G. Mealmaker in the chair.

"The convention resumed the consideration of A. Callender's motion.

"C. Sinclair. In moving an amendment to citizen Callender's motion, I must confess, that I think it impossible to mend its spirit; it breathes the spirit of a man anxious for the cause of freedom. Perhaps the partiality which every man has for his own composition, may induce me to consider the motion which I am now to lay before you in too favourable a point of view, but, considering it preferable to citizen Callender's, I feel it my duty to submit it to the consideration of the convention.

"This amendment of citizen Sinclair, and several other amendments of the same motion, proposed by different members, being read, a warm debate commenced, which almost entirely occupied this sitting: But as it was merely the wording, and not the propriety of the motion, which became the object of discussion, we omit any account of the speeches.—It was at last determined that the president should take the sense of the house upon the following questions, viz.

"1. Does the convention approve of the spirit of citizen Callender's motion?

"2. Does the convention approve of the manner in which it is worded?

"The first of these questions was carried unanimously in the affirmative. The second was negatived by a great majority.

"A committee was then appointed, consisting of the mover, the seconder, and all the amenders of the motion, who were ordered to prepare one motion, in such terms as appeared to them most proper, and submit it to the consideration of the convention next day.

"The committee respecting the Gazetteer finished their report; and the president desired all the members of the convention to recommend it to their constituents to support that paper by subscriptions, and every other encouragement in their power.

"*Thursday.*—R. Taylor, in the chair.

"The committee of finance reported progress, and asked leave to sit again.—Granted.

"C. Sinclair.—Citizen president, your committee, appointed to amend citizen Callender's motion, sat this forenoon; and I shall now, if agreeable to the convention, submit to their consideration the report of that committee.—Fellow citizens, you will feel that this report is of the last importance. It claims our most serious attention; and is to be decided upon by our united wisdom, and supported by our united integrity.

"The house resolved itself into a general committee to consider the report, which underwent a long discussion, and received several amendments in the committee; and when the convention was resumed, it passed unanimously in the form of a declaration and resolutions *(vide end of this case)*.

"J. Gerald.—I rise to congratulate the convention on the adoption of this resolution, not only on the propriety of the measure itself, but on that unanimity and solemnity with which it has passed.

"I have not been able to procure a copy of the iniquitous act which has excited such abhorrence, but I have here the heads of the bill in the speech of Mr. Grattan, the man who, while he spoke against that bill, at the same time betrayed the liberties of his country. This bill, commonly called the convention bill, which passed in the last session of the parliament of Ireland, and which is the prototype of what may be attempted in Britain, breathes such a spirit of cruelty and oppression, that if tyranny were to be personified, it could not speak in language more insulting to the feelings of mankind.

"By the *first* head, the delegates of the people are not allowed to meet to petition parliament. Surely despotism could not be more strongly expressed even in Turkey:—There every bashaw listens to the petitions of his trembling slaves; yet that privilege is denied to the people of Ireland. But it has been said, to use a common expression, this bill was first passed in Ireland to feel the pulse of the people of Britain, that our rulers might know if it beat high with indignation, or if the blood run coldly in our veins, and we are willing to bow our necks to the yoke, and suffer in fear and in silence.

"In the *second* head, they are forbidden to meet for the purpose of asking the redress of grievances? Good God! What is government instituted for, if it is not for the redress of grievances? I had thought that in the most despotic government the people were permitted to utter their complaints, and beg to be relieved of their sufferings; but, at the close of the eighteenth century, we find this last indulgence to slaves, denied to a part of the British empire. Our government boasts, that it is the best in the world; but it is not in Ireland that we are to look for its excellencies.—Whenever a government tells the people that they must not petition, that government is tyranny; and whatever you may be told of its acts of parliament in favour of liberty, these acts of parliament are set aside; they are mere pieces of parchment, and of no more value.

"The *third* head makes it a capital offence to consider of any public concern. Now, to make a road or build a bridge are public concerns; and, of course, the people of Ireland cannot meet on business of that nature, without making themselves liable to the penalty of this law.

"Though I could not get a copy of this bill, the heads which I have read are sufficiently explanatory of its detestable principles, and I hope the measure which has passed this night, will convince the minister, that we are determined to guard against every attempt that may be made to deprive us of our rights; and though by some it may be thought a bold, by some a daring measure, yet it will be found the best for securing the peace of our country; for if such a law were suffered to pass; if men were not allowed to utter their complaints, a number of fierce and rancorous passions would arise, and we would seek to appeal to that last terrible decision; the event of which is uncertain, but which God and nature allows.

"If the servility of the people had been less, if they had dared to meet, and, in place of murmuring, to have told their rulers that there was danger in seeking to deprive them of their liberties, we would not have had to adopt this resolution to-night; but, when I saw the calm deliberate countenances of all present, and the solemn manner in which it was passed, I was convinced that it would not only be a resolution of words, but a rule of action.

"M. C. Brown.—I beg leave to make a few observations, on this occasion, in addition to those which have fallen from citizen Gerald. That member of the Irish House of Commons, who betrayed the interests of his country, received from the generosity of the people of Ireland a handsome fortune, and his conduct may teach us what we have to expect from the members of our parliament.

"In a mixed government, liberty is often more in danger than if the people had no parliament to depend upon, and they may even be made slaves under the forms of the law. The great influence of the minister in this country, by having the disposal of all places, civil and military, may materially endanger the national liberties, although all the forms of the constitution are preserved.

"In arbitrary governments, the prince is afraid to commit any extraordinary act of oppression, because, in such governments there is no power constituted for the purpose of guarding the interests of the people; he is, therefore, sensible, that if he adopt any measure which excites general discontent, the public indignation will be turned upon himself alone: But, in this country, and under all mixed governments, if the prince possess an undue influence, not warranted by the constitution, he may, by means of that secret influence, corrupt a majority of the representatives of the people, render himself completely absolute, and procure, through the medium of a treacherous parliament, the establishment of the most obnoxious laws; for he knows that the popular fury will seldom be directed against him.

"History furnishes many examples illustrative of the observations I have made. When Augustus triumphed over the liberties of Rome, and became emperor, he knew it was not his interest to destroy the senate; on the contrary, he made it the instrument of his power, and directed it at his pleasure. Thus, it will always be found, that no despotism is more certain in its operation than that which is veiled under the form of liberty.

"If James the 2d had tried to establish the Roman Catholic Religion by the means of parliament, it is most probable that he would have succeeded. If, in place of seeking to reign without a parliament, he had, like the last Henry, understood how to make it subservient to his will, he might have done whatever he pleased, and his posterity would still have retained possession of the throne of Britain.

"Since I have mentioned Henry 8th, let me ask, what did not that monster do by the means of a servile parliament? Was it not with the arm of parliament that he brought to the scaffold the woman whom he chused to sacrifice to his lusts? Was it not in the 13th year of that reign, that the parliament declared that the will of the king should be

law? Did not the criminal laws which he enforced exceed, in number, capriciousness and severity, those of Nero, Caligula, or Domitian. The history of this reign proves, that Henry exceeded the most tyrannical of his predecessors for what they scarce dared to do with fearful and trembling hands, he did boldly, and with safety, under the sanction of parliament.

"A secret committee was appointed to fix a place for the meeting of the convention, under the circumstances mentioned in the preceding resolution.

"*Friday.*——Wilson in the chair.

The most important business, which came before the convention, this evening, was a motion by A. Wright, for diffusing political knowledge in the Highlands of Scotland.

"A. Wright.—I have for a considerable time revolved this question in my mind, and though, I have always had the measure proposed much at heart, I believe I would not have brought it forward, at this time, had it not been also suggested by our own brethren from the South.

"I cannot at present enter into a full enumeration of all the various species of tyranny exercised over the people of the Highlands. I shall only mention a few of the hardships under which they labour: and first, the law which was surely meant to protect the poor, as well as the rich, is strained to oppress the poor Highlanders. The smallest trifle is made an object of dispute, by the tacksman or superior; and the unfortunate tenants not being able to support the expenses of a law-suit, are driven from their habitations and families. The next thing I shall notice, is the pride of those petty despots, the Highland lairds. One instance, I shall state, will, I believe, excite the astonishment of this convention; a Highland gentlemen had an avenue, about a mile long, into which none of his tenants dared to enter without taking off his bonnet, and if he had occasion to go to the house, though in the midst of a hurricane, he was obliged to walk all the way bare-headed.

"We have all heard of the drowning of sheep lately by the people in a certain part of the Highlands, but all the circumstances of that uncommon case have not been made public. I am well informed, however, that it was occasioned by the most enormous oppression, and insulting provocation. I have heard, that when some of these poor people went to complain of their sufferings to one of their petty tyrants, he replied to them, "Is there not water enough? go and drown yourselves."

"The excise laws are an excessive burthen in this part of the country, but nothing like what they are in the Highlands. There the people do not properly understand the law, and the exciseman, taking advantage of their ignorance, reigns with unbounded authority among them.

"With respect to the salt duty, it is a matter of great importance, and I beg leave to read some extracts from the Bee,* which will perhaps elucidate this subject better than any thing I can say:—

[Here citizen Wright read some passages from No. 1 and 8, of vol. 6, of the Bee.]

"Another hardship which these people are doomed to suffer, is the cruel practice of forcing them to become soldiers. We have often heard of the bravery of the Highlanders, and their courage and gallantry has been acknowledged and admired in every quarter of the globe, but little did their admirers know, that these men, though prodigal of their blood in the day of battle, were not voluntary soldiers, that they were forcibly embodied and torn from the bosom of their families, with all the cruelty which can disgrace the African Slave Trade. I can speak of this practice with the greater certainty, because I have been a sufferer by it. In my early years I was marked out as a proper object for the army, and I was fixed upon by the laird's son, who had got a commission for raising a certain number of men, and who was determined to *force* me to become a *volunteer;* not having, however, any inclination for the service, I saved myself by flight. The horrid measures used by the monsters who recruit in the Highlands, are scarce credible; they confine men, and starve them until they consent to be soldiers; they pursue them every where, and hunt them like wild beasts in the hills, till, by these, or such like diabolical means, the unfortunate people are forced to yield, and are driven like cattle to the slaughter. Some have been seized in church on Sunday; they had thought that they might at least go there in safety; but no where can the poor Highlander find an asylum when his laird wants volunteers. Such are the practices publicly carried on in a part of Great Britain, which we are so frequently told, possess the best of all possible constitutions, and is the most free and happy country in the world.

"Let us then endeavour to enlighten our brethren in the Highlands: let us inform them of the principles on which we act, and disseminate among them a knowledge of their rights. They will bow no longer to the yoke: They will soon cease to be at the disposal of their tyrannical masters.

"M. C. Brown spoke next. In an animated speech (which we are sorry we cannot insert) he urged the propriety of the convention agreeing to the motion.

"It was then resolved unanimously,

"That this convention shall adopt some constitutional means of diffusing political knowledge in the Highlands of Scotland.

"A member announced that there was a visitor present who offered five pounds to

* A Periodical Work, published in Edinburgh.

begin a subscription for carrying the above resolution into effect.—Honourable mention in the minutes.

"A letter addressed 'To the president of 'the British Convention,' and subscribed 'A 'Friend to Virtue and Reform, and an Enemy 'to Vice and Tyranny,' was read. It contained many patriotic sentiments, and stated, that as the author was under ministerial influence, he could not openly join the cause of freedom, being certain that if he took such a step, he would be turned out of the office which he possessed, and which was the only means he had of subsistence: That having read the last week's proceedings of the convention in the Gazetteer, and observing that the state of their finances were under consideration, he enclosed two guineas as a small mark of his approbation of their views.

"Moved, that a letter of thanks to this worthy citizen for his patriotic donation, be published.—Agreed to unanimously.

"A member gave in a guinea which he had received from a friend, who was obliged to conceal his attachment to the principles of the convention, being in similar circumstances with the author of the letter which had just been read.—He was ordered to return thanks to his friend in the name of the convention.

"*Saturday.*—W. Haddow in the chair.

"Resolved, that a committee, consisting of three, be appointed to revise the minutes of each sitting, so that they may be sent to the press, and a bulletin of the proceedings of the convention, published daily.

"Read a letter in answer to the unknown citizen, who sent the two guineas last night.—Approved of, and ordered to be published in the Gazetteer.*

No other business of importance during this sitting.

"*Monday, December,* 2.—J. Clark in the chair.

"The following motion by M. Margarot, was discussed this evening:

"That every society sending delegates to the convention, be requested by letter from the secretary immediately after the session, to transmit to him a written approbation of our proceedings.

"This was objected to by some, as being unnecessary; but was supported by a far greater number; and, at last, passed unanimously.

"In the course of the debate, M. Margarot observed, this measure would prove that the convention were really delegated by a numerous body of industrious citizens, and that they were not, as had been alleged, 200 individuals met without any one knowing whether they had constituents or not. That the society in London, which he and his colleague represented, consisted of 12,000 or 13,000. That the societies in Sheffield and the neighbourhood, amounted to about 10,000 persons. That the delegation which he had received from the Norwich Society, conveyed the accession of at least 3,000 men to the strength of the convention. These numbers, added to the great body in Scotland, would

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* The letter is inserted in another page of the same No. of the Gazetteer, and is as follows:—

"To the worthy, but unknown Author of a Letter addressed to the President, and signed,

"*A Friend to Virtue and Reform, and an Enemy to Vice and Tyranny.*

"Fellow Citizen;—It is with the most lively satisfaction that I obey the order of the convention, to acknowledge the receipt of your truly excellent letter, with the patriotic donation of two guinea notes contained therein, towards supporting the finances, and to return you its warmest thanks for the noble and unaffected manner in which you have conveyed the intimation why you cannot publicly espouse that great cause which you have convincingly proved you are determined secretly to support. It is much to be lamented that many thousands in the nation stand in the same predicament with yourself, and while their bosoms beat highly with most fervent impulses in favour of the general welfare of their common country, the immediate preservation of themselves and families from want, and worldly misery, checks the impetus of patriotic affection, by vibrating every cord which nature has so powerfully placed around the heart in favour of individual offspring.

"The man, therefore, who does all in his power, does all that he can, or ought to be expected from him; and the convention has no doubt, but the worthy and laudable example you have held forth, will be followed by great numbers, who are similarly circumstanced, in favour of the general interests of themselves and posterity.

"It is, and will ever be, the pride of the convention, to acknowledge themselves sensibly impressed with the most pleasing sensations, in being thought deserving of individual, as well as collective approbation. They have no object in view, but that of promoting the general welfare and happiness of the people, to whose consideration their proceedings will be continually submitted, and who from thence will be enabled to judge with candour and impartiality, of the extent in which they ought to afford them their confidence and support.—I am with great respect, fellow citizen, your's.

W. S. Secretary."

"N. B. I am ordered also by the convention, to return thanks for the several other smaller donations, and particularly for a one guinea note; through the medium of a member."

convince their enemies, that the convention was not to be despised.

"In the course of this sitting, some pointed remarks were made by a member on a contemptible publication, which appeared in a hireling Edinburgh paper, of that evening, noted for its servile attachment to the base and unconstitutional principles of the present Reevesian system.

"The convention was divided into sections, according to rule, and adjourned till next day.

"*Tuesday, Dec.* 3.

"Wilson in the chair.

"M. C. Browne delivered a commission appointing him the delegate of a society for parliamentary reform in Leeds.

"Part of the report of the committee of regulations was read.—Ordered to be printed and delivered to the sections.

"Some resolutions respecting the freedom of the press proposed by A. Scott, were read and submitted to the consideration of the convention.

"M. Margarot. There is but one voice in this convention relative to the freedom of the press. Imprisonment and various other punishments have been inflicted on men for what are called libels; and it has generally been printers or publishers, and not the authors, who have been prosecuted. The only objections I have to the resolutions of citizen Scott are their inutility, and the impropriety of this convention giving any opinion on the conduct of a jury.

"The delegates from London might have gone farther than any thing in these resolutions, for their constituents have resolved, that to publish political truths can never be criminal; but as we do not meet here in a legislative capacity, I am of opinion, that we ought to confine ourselves more to the great object we have in view, the redress of our grievances by a reform in parliament, and by no means pass a resolution which seems to convey a censure on the country; for though I am far from thinking that the twelve men who found Mr Holt guilty spoke the sentiments of a majority of their countrymen, yet the judgment of a jury is, in the eye of the law, considered as the judgment of the country, though it may have been given through a corrupt medium.

"With regard to the judge, I think we have more reason to thank than to censure him; such sentences help to open the eyes of the people, and do more to convince them of the necessity of a parliamentary reform than any thing that he can say to them. Indeed the conduct of our enemies is, in many cases, marked with a degree of insanity; and, as Horace says, 'Quos Deus vult perdere eos 'dementit'

"Here debate took place, which continued the greater part of this sitting, and an amendment, to the following purport was moved by M. Margarot:—

"That the thanks of this convention be transmitted to lord Kenyon for the sentence which he passed on Mr. Holt, as all such proceedings tend to promote the cause of parliamentary reform.

"*Wednesday, December* 4.

"—— MacGibbon in the chair.

"M. Margarot. Your committee of regulations have not been able to bring forward the remainder of their report this evening, they have not, however, been idle, they have been employed in another manner, in your service.

"It has been observed that we admit spies under the name of strangers. I say they are welcome, and if the men, by whom they are employed, were to come here, they should be welcome also,—for we have no secrets which we dare not avow. But the intelligence which I have to communicate, will show, that those who are not friendly to reform, and who have an interest in supporting the existing abuses, are using every endeavour to put a stop to our meetings. If they abide by law, we are safe, for they cannot deny that we are met for a legal and constitutional purpose, but as the people in power, may take measures against us, not warranted by law, we ought to be prepared.

I have in my hand the outlines of a motion, which I would wish to propose in a fuller house; however, I shall in the mean time observe, that I am informed, there are many men who are desirous of dispersing us by force; we ought, therefore, to prepare against such dispersion. We have already appointed a secret committee for fixing a place of meeting, on certain emergencies, and we ought to be equally well provided against present case; for if we shall happen to be dispersed to-night, how, or where are we to rally again?—to do this, your committee suggests a resolution to the following effect, but which I shall leave to be drawn up by the council of the table.

"That the moment of our illegal dispersion shall be considered as a summons to every delegate to repair to the place appointed by the secret committee, in cases of emergency.

"I hope, that what has been already said, will convince the convention, that your committee of regulations, though they have not been able to bring forward their report, have not neglected their duty; and it will convince our enemies that we do not altogether neglect them; they will see that we proceed with regularity, and that we have an eye upon them while they have spies upon us. I therefore move for leave to bring in this motion.—Granted.

A. Scott withdrew his proposed resolutions on the freedom of the press, for amendment.

The motion for petitioning parliament, was now proposed to be taken into consideration, but it was decided that it could not be brought in until to-morrow, that being the day already appointed by the convention. When the debate on the propriety of bringing forward this motion, was closed, M. Margarot's was

again brought in, as drawn up by the council of the table, and after a short discussion, it passed unanimously in the following terms.

"That the moment of any illegal dispersion of the present convention, shall be considered as a summons to the delegates, to repair to the place of the meeting, to be appointed for the convention of emergency. And that the secret committee be directed to proceed without delay, to fix the place of meeting.

"*Thursday, December* 5.

"S. Paterson in the chair.

"The British convention assembled here this evening, conform to the adjournment of yesterday. Were informed by their secretary, that he had been apprehended this morning, by warrant of the sheriff, and by the same warrant, all his papers had been seized and carried to the sheriff clerks chamber, and there detained; that, therefore, he could not present the minutes to be read as usual, in the convention, having reason to apprehend, that they must have been abstracted somehow, in the above-mentioned affray. The convention was also informed, that Messrs. Margarot, Gerald, Callender, Scott, W. and George Ross, had also been apprehended, and were still in confinement,—and likewise, that the accusations against the whole of these members related to their conduct in this convention, and are all of a general nature; and that, therefore, the ultimate designs of these oppressions were planned against the convention itself.

"The convention then appointed their treasurer to repair immediately along with Messrs. Paterson, their chairman, Campbell, Fortune, and others, who voluntarily offered themselves to give bail for such of their suffering brethren, as might be in need of the same. These gentlemen were not retired, when the provost and magistrates of the city came in, and demanded whether the meeting now assembled, was the British convention? They were answered from the chair, that it was the British convention of the delegates associated for consulting on the constitutional means, for obtaining their right to universal suffrage, and the annual election of their representatives. Upon this answer being given by Mr. Paterson in the chair—The Provost replied to Mr. Paterson, are you the president of the convention? and, upon his answer, that he was the president for the time, the provost, as chief magistrate, ordered him to leave the chair, and dissolve the meeting. The president replied, I cannot do this without leave of the convention, but as I had got permission to retire just before you came in, I am willing, for my own part, to obey your lordship.—W. Skirving. Mr. President, you cannot retire yet. The convention resolved last night that they would not give up their right of assembling, nor be dismissed, till *constrained*. The lord Provost replied, that this was nothing to him. He commanded them, as chief magistrate of the city, to dismiss: and if they would not he would force them. The secretary replied, that, though chief magistrate, he could have no authority but *by law*, and such authority could only be exercised *in a legal way*, that was, upon a complaint lodged, and judicial procedure following:—

"Lord Provost.—I insist upon your departing hence, you may meet in any private houses, but you shall not meet here.—A Member.—My lord this is a private house, and the house is ours for the time.—Wm. Skirving.—Yes, my lord, I have taken this house for a time certain for the use of the convention; it is a Mason's Lodge and nothing can be more private than a Mason's Lodge.——Lord Provost.—I am determined you shall depart. I look upon this to be an illegal and unconstitutional meeting, and its my duty to disperse you.——M. C. Brown.—My Lord Provost, I demand your attention. Your lordship says, 'we are an illegal and unconstitutional meeting, and it is your duty to disperse us.' If, my lord, we are an illegal and unconstitutional meeting, we were so from the beginning of our sitting, and it was your lordship's duty to disperse us at the first; we have now sat near three weeks, and till this moment have had no intimation of the kind. Your lordship's *duty* must therefore, have been so long asleep. If our meeting was *illegal*, we ought to have had the earliest notice of its being so, unless the laws are to be made use of, in the words of the poet, as 'springs to catch woodcocks,' to entrap the unwary, and then punish him for being ensnared. But, my lord, I do beg leave to insist, that our meeting is strictly *legal* and *constitutional*. Since the first moment of it, we have done nothing but what was open to the public, our doors have always been accessible to every one, as far as the room would permit. We have all along admitted persons who were known to be sent as *spies* upon our proceedings. Had we met to hatch sedition, or to promote any thing unlawful, we would have avoided this conduct, and acted secretly.——Lord Provost.—It is not so much your meeting at first that was wrong as your publications; you have published things that ought not to be allowed ——M. C. Brown.—That, my lord, is another proof of the perfect conviction in our minds that what we did was legal and constitutional. Whoever published the proceedings, could only do it by means of the free admission given to strangers, or in other words, those who were not members; and it is a most convincing proof, that we were neither ashamed nor afraid of what was done in convention.——Lord Provost.—I have no further time to argue.—I insist upon your dispersing.

"Mr. Paterson, in the mean time, stept out of the chair, and M. C. Brown, by the unanimous voice of the convention, was called to succeed him.

"M. C. Brown in the chair.

"Lord Provost.—I insist upon your immediate departure, otherwise I shall be under the disagreeable necessity of using force.

"M. C. Brown.—I have been called to this post, by the unanimous voice of the convention, and with their consent I shall sit here, until compelled by force.

"Several members supported the president, upon which the lord provost called in the constables.

"W. Skirving.—I move, 'That as the convention cannot break up their meeting, unless compelled; and as they are not willing, nor prepared, to oppose violence: that if the provost offer to put the president from the chair, they shall accept of that as a sufficient token, and dismiss accordingly.'

"It was then moved by a member, that the persons composing the convention should draw off to one side of the house, and that the provost should call on the constables, who should insist on their departing immediately.

"Lord Provost.—Mr. Brown, do you agree to this.

"M. C. Brown.—My lord provost, I entreat you, and also the worthy citizens who accompany you (upon hearing the word citizen reiterated by some of his lordship's attendants); Mr. Brown added, I beg their pardons, by whatever other names they choose to be called, I mean the gentlemen in the gold chains, to take notice, that I never mean to fly in the face of the laws. As chief magistrate of this city I will pay you all respect; but I will, nevertheless be bold enough to declare, that I cannot quit the chair till the convention desires it, unless compelled by force.

"Lord Provost.—I will then act as chief constable; and immediately stepped up, and pulled Mr. Brown from the chair.

"When at the bottom of the steps, M. C. Brown turned round, and desired the gentlemen in the gold chains to take notice, that he could not possibly wish to be attended on such an occasion by a more respectable chief constable than the lord provost of Edinburgh.

"The cry of violence was then raised; and a member got on one of the tables, and moved to adjourn to the lodge at the head of the Canongate.

"This was immediately agreed to; and the members of the convention departed for that place, leaving the lord provost and his attendants in peaceable possession of their former place of meeting.

"It is unnecessary to observe, that though the lord provost, in the whole of this affair, acted as a magistrate, determined to do what he thought his duty, he never lost sight of the behaviour and deportment of the gentleman.

"Canongate Lodge, eight o'clock.

"M. C. Brown in the chair

"The convention being met, they proceeded to consider the steps proper to be taken in consequence of the outrage committed against them; and it was then moved, and unanimously resolved—

"That the convention be instantly declared permanent,

"It was also moved, and unanimously resolved, to appoint a commitee to report, &c.

"Which being done—

"The President claimed the attention of the assembly; and in a speech of considerable length, asserted and pointed out their rights. It is not in our power to give the whole, but the following has been sent to us by a person who was present:—

"'An all grasping and domineering aristocratic influence pervades and overspreads 'the kingdom, and by threats and promises 'endeavours to terrify or seduce the people 'from the assertion of their rights, and from 'exerting that native energy which appertains 'to them, and which, if once put in motion, 'by a strict union, and peaceable and constitutional petitions, must overbear every opposition. Hence the dreadful and iniquitous 'alarm which had lately been raised of plots 'and conspiracies, which have not, nor ever 'had, the smallest existence, except in the futile and wicked brains of those who fabricated these barefaced falsehoods, and afterwards industriously by themselves, or their 'emissaries spread it abroad. Hence the foul 'and villainous calumnies which are continually thrown out against the Friends to Reform 'and Constitutional Societies, as in these they 'see, with terrified aspect, the future saviours 'of the dearest rights of the people.

"'The proceedings of this night, fellow 'citizens, ought to convince you, that it particularly behoves us not to sleep upon our 'posts. The rights of Britons, the franchises 'and privileges of freemen are in danger of 'being annihilated and destroyed by a torrent 'of influence unexampled in the annals of 'the world. I do not wish you to rely on 'my authority for this; I will give you that 'of lord Chatham, the father of the present 'chancellor of the exchequer; who in a 'speech in the House of Lords, on the 9d of 'February 1770, on the question of the Middlesex election, in which the House of Commons had declared *a part* to be greater than '*the whole* delivered himself in the following 'words:

"'He had not trespassed on their lordships patience at that late hour of night, 'when the length of the debate must have 'fatigued their lordships considerably; but 'he could not apologise in a case so deeply 'interesting to the nation, no time can be too 'long; no time can be lost; no hardships can 'be complained of.

"'He condemned the conduct of the 'House of Commons, in terms of asperity. 'He denominated the vote of that House, 'which had made colonel Luttrel, representative for Middlesex, a gross invasion of the

'rights of election—a dangerous violation of 'the English constitution—a treacherous 'surrender of the invaluable privilege of a 'freehold, and a corrupt sacrifice of their own 'honour. These measures he said, made a 'part of that unhappy system, which had 'been formed in the present reign, with a 'view to new-model the constitution, as well 'as the government. These measures origi-'nated, he would not say with his majesty's 'knowledge, but in his majesty's councils. 'The Commons had slavishly obeyed the 'commands of his majesty's servants, and had 'thereby exhibited and proved, what might 'have been only matter of suspicion before— 'that minister held a corrupt influence in 'parliament—it was demonstrable—it was 'indisputable.'

"A committee to report, with all convenient speed, on the means to be adopted for making a spirited resentment of the illegal proceedings of this day, against their honest and constitutional proceedings, together with a solemn appeal to the public.

"The meeting was then adjourned to five o'clock, on Friday evening, at the same place.

"*Dec.* 6.———Campbell in the chair.

"Several delegates were received from different parts of the country.

"The members of the convention who had been carried before the sheriff yesterday, were requested to give an account of their examination.

"M. Margarot described the manner in which he and his colleague were arrested by the sheriff officer, who refused to show his warrant for apprehending them; he informed the convention that after having been detained in custody from seven A. M. till nearly the same hour in the evening, he was conducted, into the sheriff's chamber for examination: that the questions put to him were, "Are you a member of the British Convention? Did you make or second any motion there?" &c. To which he gave one uniform answer, "I do not acknowledge the legality of a private interrogatory." He was frequently required to open a small trunk, into which he had put his papers; but after having refused to open or to deliver the key that it might be opened in his presence, he was at last, dismissed, upon finding bail to the amount of 2000 merks.

"J. Gerald informed the convention, that being somewhat indisposed, nothing but a sense of duty would have brought him out this night. He observed, that proceedings nearly similar to those related by Margarot had taken place at his examination; that upon being interrogated by the sheriff he informed him that he would answer no questions, if they were demanded as a matter of right; but if asked out of curiosity, he had no objection to answer the present question. To one question, he replied, that he would not answer it, unless he were put to the torture; and at last declined giving any answer whatever.

"While J. Gerald was giving an account of his illegal arrest, he perceived a messenger enter the room; he, however went on. 'If 'government sends spies amongst us, they are 'acting superfluously, for we say nothing of 'which we have reason to be either afraid or 'ashamed. At all events, spies will now be-'come as useless as they are contemptible; 'for the time is fast approaching when the 'enemies of freedom will be able to see with 'their own eyes, Let not, however, the offi-'cers of government be objects of your indig-'nation. If they really knew how they were 'degraded as moral beings by the service 'on which they are frequently sent, they 'would not feel much respect for those who 'employ them. Let these men, then, be the 'objects of our pity and instruction. Though 'they are sent to disturb us, not one of them, 'I will affirm, has ever been informed of 'the supposed offence which we are now 'committing. Forgive them, therefore, for 'they know not what they do.'

"Citizen Gerald was now interrupted by the entrance of the sheriff substitute for the county, attended by the magistrates of Edinburgh, constables, &c. upon which he exclaimed, 'the rights of Britons are violated 'by this illegal interruption of our peaceful 'meeting. It is force not reason, with which 'our enemies assail us. I defy them to 'assign one reason against the lawfulness of 'our meeting. But if they thirst after our 'blood they may now gratify themselves; 'mine I shall see flow with pleasure, if with 'it flows the freedom of my country.'

"M. Margarot having been called to the chair, he told the sheriff, that the British convention was a legal and constitutional meeting, that it was composed of delegates of the people, associated to obtain universal suffrage, and an annual election of their representatives. That the question in the order of the day, to the discussion of which the convention were immediately to proceed, was relative to the petitioning parliament; he therefore observed, that the sheriff, by dispersing this peaceable and orderly meeting, violated the constitutional rights of the people.

"The sheriff said he had orders to disperse them by force, and insisted that the meeting should be immediately dissolved. The preses required that some mark of force should be shown before he left the chair, and upon the sheriff taking him by the arm, he came out of his seat. J. Gerald was called to the chair by the unanimous voice of the convention, and it being observed that the sittings of the convention had always begun and concluded with prayer, and that they ought not to depart from their usual practice on this occasion, the preses was desired to adjourn the meeting in the common form, citizen Gerald then delivered the following prayer.

"O thou Governor of the Universe! we rejoice that at all times, and in all circumstances, we have liberty to approach thy throne, and that we are assured, that no sacrifice is more acceptable to Thee, than that which is made for the relief of the oppressed. In this moment of trial and persecution, we pray that thou wouldst be our defender, our counsellor, and our guide. O be thou a pillar of fire to us as thou wast to our fathers of old, to enlighten and to direct us; and to our enemies, a pillar of cloud, of darkness, and confusion.

"Thou art thyself the great patron of liberty. Thy service is perfect freedom. Prosper, we beseech Thee, every endeavour which we make to promote thy cause; for we consider the cause of truth, or every cause which tends to promote the happiness of thy creatures, as thy cause.

"O thou merciful Father of mankind, enable us for thy name's-sake, to endure persecution with fortitude; and may we believe that all trials and tribulations of life which we endure, shall work together for good to them that love thee; and grant that the greater the evil, and the longer it may be continued, the greater good in thy holy and admirable Providence, may be produced therefrom. And this we beg not for our own merits, but through the merits of him, who is hereafter to judge the world in righteousness, and in mercy.

"After which the same mark of force was shown, and the meeting adjourned."

The following Address, inserted in the Gazetteer No. 80, was likewise received as evidence on this trial.

Friends of the People;—The general committee of your societies here, which should have met as usual on Thursday last, was necessarily postponed till Thursday first, by reasons of the sittings of the convention. The British convention being now constrained to adjourn, to the place appointed for its meetings of emergency, the general committee of the Friends of the People in and about Edinburgh, are requested to assemble in a house belonging to Mr. Skirving, their secretary, formerly denominated the Cock Pitt.

As our meetings are perfectly constitutional, and our proceedings such as we dare avow, the meeting will be held at 12 o'clock at noon.

A full meeting is entreated, for the purpose of adopting measures for defraying the expenses of the delegates while attending their duty in the convention.

Edinburgh, W. SKIRVING.
December 10, 1793.

THE members of the Court of Justiciary assembled precisely at ten o'clock in the forenoon. Mr. Skirving appeared, and placed himself at the bar.

His majesty's advocate, for his majesty's interest, was then, in the usual form called against the panel. Mr. Skirving was desired by the lord justice clerk, to listen to the indictment against him, which was to be read immediately by the clerk of the court. Of that indictment the following is a true copy.

"George, by the grace of God, king of Great Britain, France, and Ireland, defender of the faith, to macers of our court of justiciary, messengers at arms, our sheriffs in that part conjunctly and severally, specially constitute, greeting. Whereas, it is humbly meant and complained to us, by our right trusty Robert Dundas, esq., of Arniston, our advocate for our interest; upon William Skirving, tenant or lately tenant in Damhead, now designing himself of Strathruddie, and presently residing in Edinburgh. Whereas, by the laws of this, and every other well governed realm, sedition is a crime of an heinous nature, and severely punishable. Yet true it is and of verity, that the said William Skirving above complained upon, is guilty actor, or art and part thereof. In so far as, sometime during the months of June, July, or August, one thousand seven hundred and ninety three, a seditious or inflammatory writing, calculated to excite the people to acts of outrage and violence, by insidiously calumniating and misrepresenting the measures of government, and seditiously justifying the enemies of our country, with whom we are at open war; having been at Dundee, or elsewhere, to the public prosecutor unknown, composed or written by Thomas Fysche Palmer,* clergyman, formerly residing in Dundee, or by some other person or persons; and after having been printed at Edinburgh, or elsewhere, a number of copies of the said writing or paper, was transmitted, or caused to be transmitted, by the said Thomas Fysche Palmer to the said William Skirving, in order to be by him distributed and circulated: which seditious and inflammatory writing, or paper, the said William Skirving did, sometime during the months of June, July, or August, aforesaid, wickedly and feloniously, circulate among various persons in Edinburgh, in the county of Edinburgh, or elsewhere; and which seditious writing, or publication, was of the title and tenor following: 'Dundee, Berean Meeting-house, July 1793. At a General Meeting of the Friends of Liberty, they unanimously resolved to publish the following Address to their Fellow Citizens:'—'Friends and Fellow Citizens, 'you who by your loyal and steady conduct, 'in these days of adversity, have shown that 'you are worthy of at least some small portion of liberty, unto you we address our 'language, and tell our fears. In spite of the 'virulent scandal or malicious efforts of the 'people's enemies, we will tell you whole 'truths; they are of a kind to alarm and

* See his Case, p. 238, of this Volume.

'arouse you out of your lethargy. That portion of liberty you once enjoyed is fast setting, we fear, in the darkness of despotism and tyranny. Too soon, perhaps, you who were the world's envy as possessed of some small portion of liberty, will be sunk in the depth of slavery and misery, if you prevent it not by your well-timed efforts. Is not every new day adding a new link to your chains? Is not the executive branch daily seizing new, unprecedented, and unwarrantable powers? Has not the House of Commons (your only security from the evils of tyranny and aristocracy) joined the coalition against you? Is the election of its members either fair, free, or frequent? Is not its independence gone, while it is made up of pensioners and placemen? We have done our duty, and are determined to keep our posts, ever ready to assert our just rights and privileges as men, the chief of which we account the right of universal suffrage in the choice of those who serve in the Commons House of parliament, and a frequent renewal of such power. We are not deterred or disappointed by the late decision of the House of Commons concerning our petition. It is a question which we did not expect (though founded on truth and reason) would be supported by superior numbers. Far from being discouraged, we are more and more convinced that nothing can save this nation from ruin, and give to the people that happiness which they have a right to look for under government, but a reform in the House of Commons founded upon the eternal basis of justice, fair, free, and equal —Fellow citizens, The time is now come, when you must either gather round the fabric of liberty to support it, or, to your eternal infamy, let it fall to the ground to rise no more, hurling along with it every thing that is valuable and dear to an enlightened people. You are plunged into a war by a wicked ministry, and a compliant parliament, who seem careless and unconcerned for your interest; the end and design of which is almost too horrid to relate, the destruction of a whole people, merely because they will be free. By it your commerce is sore cramped and almost ruined. Thousands and ten thousands of your fellow citizens from being in a state of prosperity, are reduced to a state of poverty, misery, and wretchedness. A list of bankruptcies, unequalled in any former times, forms a part in the retinue of this Quixotic expedition. Your taxes, great and burthensome as they are, must soon be greatly augmented; your treasure is wasting fast; the blood of your brethren is pouring out; and all this to forge chains for a free people, and eventually to rivet them for ever on yourselves. To the loss of the invaluable rights and privileges which our fathers enjoyed, we impute this barbarous and calamitous war, our ruinous and still growing taxation, and all the miseries and oppressions which we labour under. Fellow citizens, The friends of liberty call upon you by all that is dear and worthy of possessing as men; by your own oppressions; by the miseries and sorrows of your suffering brethren; by all that you dread; by the sweet remembrance of your patriotic ancestors; and by all that your posterity have a right to expect from you, to join us in our exertions for the preservation of our perishing liberty, and the recovery of our long lost rights.'—Farther, a number of seditious and evil disposed persons, having during the course of the year one thousand seven hundred and ninety-three, or previous thereto, at Edinburgh or elsewhere, associated themselves under the denomination of 'Friends of the People' but with purposes inimical to the happiness of the people and to the peace and security of the country, the said William Skirving, above complained upon, being then a leading and active member of such illegal association, and designing himself 'Secretary General in Scotland' of the same, did, at Edinburgh or elsewhere, on the fourth day of October, one thousand seven hundred and ninety-three, or on one or other of the days of that month, or of the month of September immediately preceding, or of November following, wickedly and feloniously compose, or cause to be composed and written, a seditious and inflammatory hand bill, (bearing date, 'Mason's Lodge, Blackfriars Wynd, 4th October, 1793," calling upon and inciting other illegal and seditious associations to convocate and unite together, and holding out threatenings against those who either had counteracted or may counteract their seditious proceedings. At least, the said William Skirving did, time and place foresaid, approve of, and recommend such seditious hand bill when written; and, which seditious hand bill, bearing the name of the said William Skirving, annexed to it, having been, by orders of the said William Skirving, or of the association to which he belonged, printed and published, a number of copies, to the amount of several hundreds, was, by the said William Skirving, or by his orders, wickedly and feloniously distributed and circulated in Edinburgh, and elsewhere: which hand bill, written and distributed as aforesaid, contained, among others, the following passages: 'The landholder is called upon to coalesce with the Friends of the People, lest his property be soon left untenanted: the merchant, lest the commerce of the country be annihilated: the manufacturer, whose laudable industry has been arrested in its progress: the unemployed citizen—the great mass of labouring and now starving poor, and, finally, all the rabble are called upon by the remembrance of their patriotic ancestors, who shed their blood in the cause of freedom, and to whose memories even the enemies of that cause are compelled to pay an involuntary tribute of applause. They are called upon by the en-

'dearing appellation of father, by the claims 'of their children, and in the name of unborn 'millions, to demand, with the firm and ener- 'getic voice of justice, the peaceable restitution 'of their rights.'—'V. That the thanks of the 'meeting are due to Mr. Skirving, of Strath- 'ruddie, the secretary, for his unremitted at- 'tention to the duties of his office and the in- 'terests of his country, and particularly, for 'having invited societies of every denomina- 'tion to unite their exertions in the common 'cause, by sending delegates to the ensuing 'general convention.'—'Had certain gentle- 'men countenanced this association last year, 'instead of pledging their lives and fortunes 'to prompt a corrupt and ambitious ministry 'to engage in a war, which could only bring 'guilt and ruin on the nation, we might have 'been still enjoying uncommon prosperity, 'and a happy understanding amongst our- 'selves as brethren: and now, if they will 'not manfully retract that very impolitic step, 'and immediately join their influence to the 'only measure which can prevent further ca- 'lamity, if not anarchy and ruin, their pledge 'may be forfeited, and the Friends of the 'People will be blameless.—By order of the 'committee. (Signed) W. Skirving.—*N. B.* 'Those members who do not attend, or send 'an excuse, will be publicly called upon to 'give their reasons for absenting them- 'selves.'—Accordingly, a general meeting of the said illegal associations having taken place at Edinburgh, in the month of October fore- said, in consequence of the above hand bill, distributed and circulated as aforesaid, and which general meeting, having at first as- sumed the name of the General Convention of the Friends of the People, and, having there- after, presumptuously and seditiously arro- gated to themselves the name of 'The British 'Convention of the Delegates of the People, 'associated to obtain Universal Suffrage, and 'Annual Parliaments;' did, in the whole form and manner of their procedure, as well as in the principles it publicly avowed and propagated, clearly and unequivocally demon- strate, that under the specious pretext of re- form, their purposes were of the most dan- gerous and destructive tendency, hostile to the peace and happiness as well as to the con- stitution of this realm, and too plainly indi- cating the same rebellious maxims which have governed, and do still govern the proceedings of the convention of France, the public and avowed enemies of this country, and with whom this nation is at present at open war. In particular, the members of the said asso- ciation, under the names and denominations aforesaid, did, in the months of October, No- vember, and December, one thousand seven hundred and ninety-three, at Edinburgh aforesaid, in imitation of the proceedings of the said French convention, call each other by the name of 'citizen,' divide themselves into 'sections;' appoint committees of various kinds, such as of 'organization,' of 'instruc- 'tion,' of 'finance,' and of 'secrecy;' denomi- nate their meetings 'sittings;' grant ho- nours of sittings; and inscribe their minutes with 'the first year of the British Convention.' The members of which seditious association did, moreover, at times and places aforesaid, make harangues and speeches, as well as re- solutions and motions, of the most seditious tendency; the substance of which harangues and speeches, and of the said resolutions and motions were, by orders of said association, not only minuted, but published in a news- paper, entitled 'The Edinburgh Gazetteer,' and through that medium circulated among the lieges. Among other equally seditious motions, resolutions and speeches, minuted and published as aforesaid, were the follow- ing: [Scroll, Minutes, p. 37, and 47.] 'That 'previous to publishing an address to the 'public, a committee be forthwith appointed, 'to consider the means, and draw up the out- 'lines of a plan of general union and corpora- 'tion between the two nations, in their pur- 'suit of parliamentary reform.' Which mo- tion, or one of a similar import, was unani- mously agreed to, and a plan of union after- wards resolved on, thereby indicating their in- tention of propagating their principles over the whole nation, and exciting the people to the same violent and unconstitutional proce- dure. [Minutes, p. 62.] 'Citizen Callender 'moved, that in case the minister bring into 'the Commons House, a motion for a con- 'vention bill, such as was passed in Ireland, 'it shall be noticed immediately to the dele- 'gates.'—At least a motion of the above ten- dency and import was made; in consequence of which motion, it was afterwards deter- mined that a convention of emergency should take place; and a motion was made in the following terms, or at least of the following import and tendency: [Minutes, p. 67.] 'that a secret committee of three, and the se- 'cretary, be appointed to determine the place 'where such convention of emergency shall 'meet; and such place shall remain a secret 'with them, and with the secretary of this 'convention; and that each delegate shall, at 'the breaking up of the present session, be 'entrusted with a sealed letter, containing 'the name of the place of meeting; this let- 'ter shall be delivered, unopened, to his con- 'stituents, the receipt of which shall be ac- 'knowledged by a letter to the secretary, pre- 'served in the same state, until the period 'shall arrive at which it shall be deemed ne- 'cessary for the delegate to set off. Which 'motion was unanimously approved of.— 'Moved, that the moment of any illegal dis- 'persion of the present convention, shall be 'considered as a summons to the delegates to 'repair to the place of meeting appointed for 'the convention of emergency by the secret 'committee, and that the secret committee 'be instructed to proceed, without delay, to 'fix the place of meeting. The convention 'having considered the motion fully, unani-

'mously resolved the same, and appointed 'the secret committee to proceed as desired.' [P. 77.] 'Moved, that a committee be ap-'pointed to draw up a declaration of the 'natural, unalienable, and imprescriptible 'rights of man, and that the same be pre-'fixed to the Address to the People of Bri-'tain.' [P. 83.] Which motion, it appears, was afterwards referred to the committee of union. [P. 84.] 'Moved, that all the dele-'gates who had left the convention should re-'ceive letters to return immediately, and re-'main at their posts till the important busi-'ness, which was daily introduced into the 'convention, should be properly discussed.' All which motions and resolutions, together with others of the like seditious tendency, as also harangues and speeches of a similar import, were, by authority of the foresaid association, ordered to be minuted, and inserted in the newspaper called 'The Edinburgh Ga-'zetteer,' of Tuesday, November twenty-sixth, one thousand seven hundred and ninety-three, No. 78; of Tuesday, December third, one thousand seven hundred and ninety-three, No. 79; and of Tuesday, December tenth, one thousand seven hundred and ninety-three, No. 80. And the said William Skirving, above complained upon, was, during the time aforesaid, not only a member of the said association, and the chief instrument of calling them together; but was all along present at the foresaid meetings, and acted, and was acknowledged as their secretary; at which times he voted for, and approved of every motion and resolution that passed; and particularly he wickedly and feloniously, at times and place aforesaid, voted for and approved of the motions and resolutions above-mentioned; and not only so, but the said William Skirving, did himself, at times and place aforesaid, wickedly and feloniously propose and move resolutions of the same inflammatory and seditious tendency: and particularly the said William Skirving did, some time during the months aforesaid, at Edinburgh aforesaid, make the following, or motions of a similar import and tendency: [Minutes, p. 34,] 'That the convention express its ardent desire 'to cultivate a more close union with the so-'cieties in England.' [P. 56.] 'That an ad-'dress to the public should be drawn up by 'the committee of union. That a committee 'of finance be appointed. That the delegates 'from the country, who may run short of 'money by the prolongation of the business 'of the convention, shall be supplied by the 'treasurer. That all the members, both of 'the convention and of the primary societies, 'should subscribe a solemn league and cove-'nant.' And the said William Skirving did also concur in the motion formerly mentioned, for a secret committee, agreed to be one of the same, and did act accordingly in that capacity; By all which, and particularly by his acting as secretary to, and taking the chief management of the business of the said meetings, the said William Skirving showed himself an active ringleader of the said seditious associations. Further, upon Thursday the fifth day of December, one thousand seven hundred and ninety-three, or upon one or other of the said days or nights of that month, the provost and magistrates of the city of Edinburgh, having, in pursuance of their duty, repaired to a room or Mason Lodge in Blackfriars Wynd, of Edinburgh, where the foresaid illegal association was met, in order to disperse the same; the said William Skirving, above complained upon, with others, his associates, members of the said meeting, did then and there resist the authority of the said magistrates, and refused to depart, unless they were compelled to do so by force; upon which the provost or some other magistrate then present, was obliged to lay hold of the person of him who was then acting as president, and forcibly to draw him from his seat, and to compel the other members to leave the room. Notwithstanding which dispersion, the said William Skirving, and others his associates, did immediately repair to a house in that close, in the head of the Canongate of Edinburgh, commonly called the Flesh Market Close, and did there resume their foresaid illegal meeting, and in open contempt and defiance of the civil magistrate, did then and there declare their meetings permanent. And the said association having, on the day following, again met in a room or workshop in lady Lawson's yard, situated on the south side of the street called the Crosscauseway, in the parish of St. Cuthbert's and shire of Edinburg, belonging to or possessed by John Laing, wright, at which meeting the said William Skirving was present, was again dissolved in manner foresaid, by the sheriff substitute of the county of Edinburgh, and others his assistants, after being obliged to use a similar mode of compulsion. Further, notwithstanding of the foresaid repeated interferences of the civil magistrate; and notwithstanding that the lord provost and sheriff of Edinburgh had, on the seventh day of the said month of December, issued a proclamation, giving notice to the persons of the said association, that if they persisted in holding their meetings, they would be apprehended as disorderly persons, and dealt with accordingly; and also prohibiting the proprietors of halls and other places of meeting, from permitting such associations to assemble there, the said William Skirving did wickedly and feloniously, upon the tenth day of December, one thousand seven hundred and ninety-three, or upon one or other of the days of that month, or of November preceding, publish an advertisement in the Edinburgh Gazetteer, No. 80, of date the tenth of December aforesaid, signed William Skirving, and addressed "To the Friends of the People,"* inviting them to assemble in a house

* See it, *ante* p. 471.

belonging to him, William Skirving, their secretary, formerly denominated the Cockpit, on the Thursday following. In consequence of which advertisement the magistrates of the city of Edinburgh, thinking it their duty to prevent the foresaid meeting from taking place, did accordingly, by a prohibition or interdict of date the eleventh of December, one thousand seven hundred and ninety-three, grant warrant to, and authorize the officers of their court, and constables, and all other executors of the law, to prevent and suppress such unlawful convocation, and to take into custody all such persons as should attempt to contravene the same; which judgment or prohibition was accordingly notified to the said William Skirving, who had been brought before the magistrates, and had emitted a declaration of that date; acknowledging his having inserted the said advertisement. Notwithstanding of which prohibition, the said William Skirving did, upon the twelfth day of December, one thousand seven hundred and ninety-three, repair to the place where he had advertised, as above-mentioned, the foresaid illegal association to be held, and in place of only reading or notifying the judgment of the magistrates to those who were convened, he did, at the said Cockpit, or at the entry of the lane, or passage thereto from the grass-market of Edinburgh, produce and read a paper of the following tenor: 'Members of the Committee of the Friends of the People. The 'magistrates of the city having forbid your 'legal and constitutional meeting, called this 'day by advertisement, and by their proceedings to prevent it, having given occasion to a great concourse of people, which may 'issue in tumult, and must hinder your deliberations, it is judged proper to adjourn the 'meeting, and to lay the business of it before 'the several societies, for their separate determination. It is therefore proposed to 'you to give place to the violence used 'against you: you will thereby convince the 'public that you did not deserve such treatment; and now that your delegates have a 'permanent existence, your several societies 'will be multiplied greatly, and means will 'be used to lay the business before each society individually, by printed bulletins. Which paper, holograph of the said William Skirving, being of a most seditious tendency, and evidently calculated to excite the people to a continuance of their foresaid illegal associations, was forcibly taken from the said William Skirving, when in the act of reading the same, by some of the magistrates, constables, or peace officers then present. And the said William Skirving, above complained upon, having, upon the fifth day of December, one thousand seven hundred and ninety-three, been apprehended in consequence of a warrant granted by the sheriff depute of the county of Edinburgh, and a number of letters, minutes, and other writings and papers, having been found in his custody, they were put into two bags and sealed up in the presence of him and others, then present. And the said William Skirving having thereafter, upon the same day, been carried before Harry Davidson, esq. sheriff substitute of the county of Edinburgh, he did, in his presence, emit a declaration, which, as he declined to sign, was subscribed by the said sheriff substitute. And the said two sealed bags being at same time opened, in presence of the said sheriff-substitute, and the said William Skirving, an inventory of the papers, and other writings therein, was made up in their presence, and which inventory is also signed by the said sheriff-substitute, as relative to the foresaid declaration. And the said William Skirving having, upon the eleventh day of December, one thousand seven hundred and ninety-three, been brought before the right honourable the lord provost, and Neil M'Vicar and William Coulter, esqrs. two of the magistrates of the city of Edinburgh, did, in their presence, emit and sign a declaration; and having on the twelfth day of the said month of December, been again brought before the said William Coulter, did, in his presence, emit and sign a declaration. Which declarations, together with three other declarations, the one emitted and signed by the said William Skirving, on the thirty-first day of July, one thousand seven hundred and ninety-three, before Harry Davidson, esq. sheriff-substitute of the shire of Edinburgh; another emitted and signed by the said William Skirving, the seventh day of August, one thousand seven hundred and ninety-three, before the said sheriff-substitute; and the third, emitted by the said William Skirving, upon the eighth day of August, one thousand seven hundred and ninety-three, before the said sheriff-substitute, and signed by him, as the said William Skirving declined to sign the same; as also, a petition signed by the said William Skirving, given into our high court of justiciary, on the thirteenth day of August, one thousand seven hundred and ninety-three; as also a copy of the above-mentioned seditious paper, dated, "Dundee, Berean Meeting-house, July 1793;" as also copies of the above-mentioned hand-bill, dated, "Mason Lodge, Blackfriars Wynd, 4th October, 1793;" and copies of the Edinburgh Gazetteer, numbers seventy-eight, seventy-nine, and eighty; together with the scroll or draft of the minutes of the general convention, from the twenty-ninth of October, to the fourth of December, one thousand seven hundred and ninety-three, consisting of ninety-five pages,* and found in the custody of the said William Skirving, when apprehended as above, being number first of the foresaid inventory relative to the declaration of the said William Skirving emitted on the fifth of December, one thousand

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* See it at the beginning of this case.

seven hundred and ninety-three; as also, the said inventory itself, with the whole other papers and writings therein contained, and referred to; as also, the paper produced and read by the said William Skirving, at the meeting at the Cockpit, aforesaid; as also, a letter, dated "Dundee, July 9th, 1793," (Signed) "T. F. Palmer," and addressed, "Mr. Skirving, opposite Old Assembly Close, Cowgate;" will all be produced in evidence against the said William Skirving, and will, for that purpose, be lodged in due time with the clerk of the high court of justiciary, before which he is to be tried, that he may have an opportunity of seeing the same. At least, times and places above-mentioned, the said acts of sedition, by circulating and distributing the foresaid seditious productions, convocating the said illegal associations, passing and making the said inflammatory resolutions and motions, resisting and contemning the authority of the civil magistrate employed in dispersing the said associations, were all committed. And the said William Skirving, above complained upon, is guilty actor, or art and part, of all and each, or one or other, of the said acts. All which, or part thereof being found proven by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary to be holden by them within the criminal court house of Edinburgh, upon the sixth day of January next to come, the said William Skirving, above complained upon, ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming. Our will is, &c.

LIST OF WITNESSES.

To be adduced against William Skirving.

1 Harry Davidson, esq. sheriff substitute of the shire of Edinburgh.
2 Joseph Mack, writer in Edinburgh.
3 John Dingwall, writer in Edinburgh.
4 William Scott, procurator fiscal of the county of Edinburgh.
5 William Middleton, sheriff officer of Edinburgh.
6 Andrew Scott, king's constable of excise, Edinburgh.
7 George Galloway, sheriff officer, Edinburgh.
8 Alexander Morren, grocer and spirit dealer in Edinburgh.
9 John Morren, printer in Edinburgh.
10 William Moffat, solicitor at law in Edinburgh.
11 James Kidd, leather merchant in Edinburgh.
12 Alexander Aitchison, student of medicine, residing in Canongate of Edinburgh.
13 William Ross, clerk in the Gazetteer office, Edinburgh.
14 George Ross, clerk in the Gazetteer office, Edinburgh.
15 Mitchell Young, painter in Edinburgh.
16 William Sawers, merchant, Lawn Market Edinburgh.
17 John Wardlaw, writer in Edinburgh.
18 William Urquhart, shoemaker in Hanover-street, Edinburgh.
19 John Laing, wright, in Nicolson's-street, Edinburgh.
20 George Malcolm, shoemaker in Canongate of Edinburgh.
21 John Clark, mason in Edinburgh.
22 William Romanes, merchant, Lawn Market, Edinburgh.
23 Charles Ritchie, merchant, Lawn Market, Edinburgh.
24 Thomas Cockburn, merchant, Lawn Market, Edinburgh.
25 Samuel Paterson, merchant in Edinburgh.
26 Alexander Bell, tobacconist in Canongate of Edinburgh.
27 Andrew Newton, formerly tobacconist in Dunse, now residing in St. Patrick's-square, Edinburgh.
28 John Gourlay, watchmaker, Edinburgh.
29 Archibald Binnie, type founder, in Edinburgh.
30 David Downie, goldsmith, in Edinburgh.
31 John Buchanan, baker, in Canongate of Edinburgh.
32 Alexander Fortune, leather merchant, in Canongate of Edinburgh.
33 John M'Intyre, teacher, in College Wynd of Edinburgh.
34 James Robertson, printer in Edinburgh.
35 William Lind, apprentice to the said James Robertson.
36 James Fraser, sheriff officer in Edinburgh.
37 James Williamson, clerk to William Scott, solicitor at law in Edinburgh.
38 Archibald Welsh, also clerk to the said William Scott.
39 The right honorable Thomas Elder, lord provost of the city of Edinburgh.
40 Neil M'Vicar, esq. one of the magistrates of Edinburgh.
41 William Coulter, esq. one of the magistrates of Edinburgh.
42 James Laing, one of the depute city clerks of Edinburgh.
43 James Dove, town officer in Edinburgh.
44 Archibald Campbell, town officer in Edinburgh.
45 James Burnet, grocer in Edinburgh, preses of the society of constables.
46 James Denholm, hat-maker in Edinburgh, and one of the present constables in Edinburgh.

(Signed) JOHN BURNETT, A. D.

LIST OF ASSIZE.

Sir Patrick Warrender, of Lochend, bart.
Sir Andrew Lauder Dick, of Fountainhall, bart.
Sir Hew Dalrymple, of North Berwick, bart.
Sir James Hall, of Dunglass, bart.
5 General Henry Fletcher, of Salton.

William Nisbet, of Dirleton, esq.
John Hamilton, of Pencaitland, esq.
Robert Baird, of Newbyth, esq.
Francis Kinloch, jun. of Gilmerton.
Robert Hay, of Drummelzier.
Robert Hunter, of Thurston.
William Newton, of Newton.
John Hay, of Hopes.
James Wilkie, of Gilkerston.
John Glassel, of Long Niddry.
Alexander Mackenzie, of Seaton.
David Anderson, of St. Germain's.
James Hepburn, of Humbie.
John Caddell, of Cockenzie.
Thomas Brown, of Johnstonburn.
James Craig, of Setonhill.
Francis Buchan Sydserf, of Ruchlaw.
George Home, of Branxton.
James Syme, of Northfield.
James Hay, of Nunraw.
John Milne, iron-monger in Edinburgh.
William Lamb, upholsterer there.
Walter Brunton, saddler there.
William Fettis, merchant there.
William Cooper, upholsterer there.
Andrew Boog, cutler there.
Robert Buchan, painter there.
Robert Dempster, druggist there.
Thomas Armstrong, coppersmith there.
John Beugo, engraver there.
Alexander Allan, merchant there.
Peter Fraser, merchant there.
Francis Howden, jeweller there.
David Milne, merchant there.
John Gloag, merchant there.
Thomas Smith, tinsmith there.
Robert Kerr, haberdasher there.
Edward Innes, confectioner there.
Francis Braidwood, upholsterer there.
Angus M'Donald, merchant there.

(Signed) ROBT. M'QUEEN.
JOHN SWINTON.
WM. NAIRNE.
ALEX. ABERCROMBY.

I Andrew Murison, macer to the high court of justiciary, by virtue of criminal letters, dated and signed the twentieth day of December, current, raised at the instance of Robert Dundas, esq. of Arniston, his majesty's advocate for his majesty's interest, against William Skirving, tenant, or lately tenant in Damhead, now designing himself of Strathruddie, and presently residing in Edinburgh, in his majesty's name and authority, command and charge you, the said William Skirving, to compear, and to come and find sufficient caution and surety, acted in the books of adjournal, That you shall compear before the lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary, to be holden by them within the criminal court house of Edinburgh, upon the sixth day of January next, in the hour of cause, there to underly the law, for the crimes specified in the said criminal letters; and that under the pains contained in the acts of parliament; and that you come and find the said caution and surety, acted in manner aforesaid, within six days next after the date hereof, under the pain of rebellion, and putting of you to the horn, with certification as effiers. Of which criminal letters to the will, with a list of the persons names and designations that are to be adduced as witnesses against you, and a list of the persons names, and designations that are to pass upon your assize, I herewith give you full and exact copies, upon the thirty-four preceding pages, upon this twenty-first day of December, one thousand seven hundred and ninety-three years, before these witnesses, William M'Beath, and John M'Beath, both indwellers in Edinburgh, one word on page third, one word on page fifth, four words on page nineteenth, five words on page twenty-first, four words on page eighteenth, and seven words on page twenty-sixth, on the said preceding copy of the criminal letters, being delate before serving.

(Signed) ANDREW MURISON.

Lord Justice Clerk.—What do you say to this, Mr. Skirving; are you guilty or not?

Mr. *Skirving.*—I am conscious of no guilt, my lord.

Lord Justice Clerk.—Have you any counsel for you?

Mr. *Skirving.*—No, my lord, I have the misfortune to have no counsel whatever.

Lord *Eskgrove.*—Mr. Skirving very well knows that if he had wished for counsel, and had applied to the Court, he might have had counsel.*

Mr. *Skirving.*—Such is the apprehension that is gone forth of your prejudice against the Friends of the People, that an agent before the court said, it was almost giving up his business to be seen doing any thing for the Friends of the People; and therefore, I thought I would trust to the Court, and do as well as I could without counsel.—It is very unfortunate that I have had so little time to prepare for my defence; however, conscious of innocence, I must trust myself in the hands of the Court, and make the best defence I can.

Lord *Eskgrove.*—We know very well, that both the agents and the Court have so much compassion, that they never refuse to assist any panel.

Lord Justice Clerk.—The meanest subject that comes to this court, may have counsel if he applies for it. Do you wish to have counsel now?

Mr. *Skirving.*—I should be very glad of the assistance of counsel, but it would now be taking any gentleman at unawares.

Mr. *Solicitor General.* [Blair, afterwards lord president of the Court of Session.]

My lords, as the panel has stated no particular objections to the relevancy, or to the

* See Gerrald's case in this volume, *post.*

form of the criminal libel exhibited against him, perhaps in point of form the public prosecutor might dispense with saying any thing at all upon the subject; at the same time, in this case, I judge it may not be improper, for the sake of the jury who are to try this case, before the proof is adduced before them, to make some observations upon the nature of the charge contained in this indictment. And, my lords, I would the rather at this period of the cause, because I speak under the correction of your lordships; because, if I state any thing improperly, if I draw any thing out of this indictment that is not agreeable to law, your lordships, I know, will correct me.

My lords, the general nature of the charge, exhibited against this panel, is a charge of sedition, with regard to which, my lord, it is unnecessary to say any thing. My lord, unfortunately we live in times when it is unnecessary, in this criminal court, after what has passed, to say a single word, either with regard to the nature of sedition, or with regard to the mischievous tendency of it. Your lordships have repeatedly delivered opinions upon that subject, and therefore it is unnecessary to say any thing upon it.

My lord, the particular acts of sedition, charged in this libel, consist of two branches: —The first is a charge of circulating, and distributing a seditious libel: it is not necessary to trouble your lordships upon this libel; it will be before the jury; and, I think it is impossible for any person to have a doubt, that it is seditious, and seditious in the highest degree; and it is only necessary to add, that this paper, the circulation of which is charged upon this panel, has been already adjudged by two of your lordships, to be highly criminal; which was followed up by the conviction, and judgment of Fyshe Palmer,* who was charged with being the author of it, this panel being charged with the publication of it.

My lord, the second branch of the charge relates to the proceedings of what is termed a British Convention† in which this gentleman is charged with taking a very principal part.

Now, my lord, with respect to this, taking the facts as they are stated upon the face of the indictment, I say, that the meeting itself,—that the whole proceedings of that meeting were, from first to last, illegal, seditious, and such as cannot be tolerated in any established government. My lords, this will appear, by taking a view of those parts of their proceedings, and operations, which are stated upon the face of the libel.

My lord, let us begin in the first place with the manner in which this meeting is called together. The libel states, that it was called together by an advertisement, published by this gentleman, Mr. Skirving; in the indictment it is engrossed, and has been read to your lordships. There are two things in it of which I beg leave to take notice. In the first place, the people are called upon, to demand with the firm and energetic voice of justice, the peaceful restitution of their rights,—which is just in other words, telling the people that they had been deprived of their natural rights; and that they are now called upon to meet in this Convention, to obtain the restitution of that which had been unfairly taken from them. It farther contains a menace held out to the most respectable inhabitants of this country; a menace is held out to those gentlemen who a twelve-month ago associated themselves to maintain the lawful possession of the government, in opposition to these illegal associations. "Had certain gentlemen countenanced this association last year, instead of pledging their lives and fortunes to prompt a corrupt and ambitious ministry to engage in a war, which could only bring guilt and ruin on the nation, we might have been still enjoying uncommon prosperity, and a happy understanding amongst ourselves as brethren: and now, if they will not manfully retract that very impolitic step, and immediately join their influence to the only measure which can prevent further calamity, if not anarchy and ruin, their pledge may be forfeited, and the Friends of the People will be blameless." Their pledge may be forfeited—that is to say, their lives are to be forfeited; and the Friends of the People will be innocent. This is the manner in which the meeting is called together, and a menace held out to nine-tenths of the inhabitants of Great Britain; a menace held out to all the respectable people, who had any thing to lose by scenes of anarchy and confusion. Upon this advertisement, the libel states "that a meeting did assemble, and that the parties having at first assumed the name of the General Convention of the Friends of the People, and, having thereafter, presumptuously and seditiously arrogated to themselves the name of the British Convention of the People, associated to obtain Universal Suffrage and Annual Parliaments;" British Convention of the Delegates of the People—thereby holding out, that they were the representatives of the inhabitants of Great Britain—nothing more false,—nothing more seditious; the people of Great Britain, we have reason to be thankful, are represented in parliament. The very name of British Convention carries sedition along with it; it is assuming a title which none, but the members of the established government have a right to assume. And the British Convention, associated for what? for the purpose of obtaining universal suffrage; in other words, for the purpose of subverting the government of

* See his case p. 238 of this volume.

† A minute account of the origin and history of the Convention will be found in the second report from the committee of secrecy of the House of Commons, to whom the several papers referred to in his majesty's message of the 12th day of May 1794, were referred.

Great Britain; because, I will take it upon me to affirm, that universal suffrage is an idea that never entered the head of those who framed the constitution, those who laid the foundation of that happy constitution under which we live; nor was it ever maintained, or ever thought of by any body else.

My lord, I say it would be such an idea, that, if it was once adopted, would be at once declaring that the constitution of Great Britain is at an end; an idea that our ancestors never thought of, and never was adopted in any country, ancient, or modern, at least in any government of the extent of Great Britain it was never tried, except indeed in one instance—a modern experiment, and one which I should have thought that no nation in the world would choose to repeat. I mean the experiment made by France.

My lord, having assumed this name, which I say carries sedition upon the face of it, they proceed as is stated in the indictment, and in the whole of their proceedings they assume the names, and the language of the French convention; they have a convention; they have primary assemblies, they have the name of citizens, which the members of the society commonly pass by,—they have committees of finance, of instruction, of organization; and they date their proceedings, in the first year, not of the republic indeed, but of the British Convention. In short we find them constantly departing from the language of this country, and adopting foreign language; which, when connected with those scenes that it has produced, show a wish to adopt a model, which, I am not a little surprised that any person in this country could have thought of. Indeed, this very circumstance, connected with what has happened in another country, appears to me so strong, that, had not our information been most strong and pointed, I should not have believed it possible, that any set of men could have held meetings that were, if I may use the expression, consecrated to mischief; using a phraseology which laid the foundation of those scenes of anarchy,—those scenes of rapine,—those scenes of bloodshed, of cruelty and barbarity hitherto unknown in the world, which have desolated that unhappy country, and disgraced it among the nations of the earth. I say, I could not have believed, that, in this country, any man, or set of men, with those scenes before their eyes, for I say, not one of them can be ignorant of what is going on in France,—I say, with this awful memento before their eyes, that they should notwithstanding have chosen to form themselves upon that wicked model. I can only see one excuse, and the panel may plead that, and satisfy the jury of it, that it was done with a good and beneficial purpose; that he and his associates, desirous to check that tide of sedition in this country tending to alarm the sober minded people, that they, on purpose, assumed this language, in order to show, that they had now thrown off the mask, to shew plainly what they were pointing at, thereby to disgust and alarm every sober, every thinking, rational person; if the panel can prove that this was his intention, that may be a very good excuse; but, I say it is impossible that any other apology or any other excuse can be framed for it.

Then, my lord, the libel states some particular motions and proceedings of this assembly, particularly a motion made by citizen Callender, directed to an event which they saw might happen,—namely, proceedings in parliament to put a stop to their meetings. Citizen Callender's motion was, that notice should be immediately given to the delegates —well, what follows? a resolution that there shall be called a convention of emergency. When the proof comes before the Court, they will see what those emergencies were; one of the emergencies was in case a convention bill should be brought into parliament; and another that of a French invasion happening. In either of these cases, this convention of emergencies was to take place, to assemble together; and what is more extraordinary, the place of meeting is to be a secret amongst themselves; a committee of secrecy is to be appointed, of which Mr. Skirving is a member; which is to be kept secret from the world and every body else but the committee. Does it need language to express what this means, that this convention is to meet together, and in a place where no person is to know where they meet? is it possible for any construction to be put upon this, but that it was in order to prevent any measures being taken to stop their meeting, which were contrary to law, and could not be tolerated in any country? and why should this matter be kept a secret if it was only to petition parliament for a reform? what occasion was there for secrecy and hiding themselves in holes and corners? I say this committee of secrecy and this convention of emergencies stamps sedition upon the whole of the proceedings.

My lords, I shall have only one other motion to take notice of, a motion made by Mr. Skirving himself. "That the delegates from the country, who may run short of money by the prolongation of the business of the convention, shall be supplied by the treasurer. That all the members, both of the convention and of the primary societies, should subscribe a solemn league and covenant." I am sure no words are necessary to satisfy your lordship, that this was most illegal and most seditious.

My lord, those are the principal acts of this seditious meeting, which are stated in the libel, and to which the attention of the jury will be particularly attracted.

My lord, the indictment next goes on to state some particulars, with regard to the dispersion of this meeting, when the magistrates and sheriff found it their duty to disperse them; and you will find, that after being so dispersed, they met again; another meeting is held at the cockpit, and there the magis-

trates also declared, they must not meet; upon which Mr. Skirving reads a paper, which is of a very invidious nature; it takes care to mention every thing that can put them in a passion, it is just as if I had said every thing I could to put a man in a passion, and then desired him to be calm; telling the people, that to prevent them from assembling was an act of violence on the part of the magistrates.

My lord, such are the acts charged against this panel, and which I have no difficulty in contending, are most illegal and seditious.

I might plead before your lordships, that a meeting of this kind was seditious, illegal, subversive of government, at every period whatever; had such a meeting been held five years ago, when every thing was quiet in this country, I should have had no difficulty to prove it was seditious: but you will attend to the time at which this meeting was held, the law is always the same, immutable, but the crime is of that nature, that the circumstances of the time must operate very strongly; and what is a slight thing at one period, may be a very atrocious act at another; for example, to draw an illustration from what some of us may remember, supposing five or six years ago it had happened, that a few persons in Edinburgh had assembled, put on white cockades, marched to the Castle-hill, and fired a shot or two, I presume nobody would have thought, at that period, that that was high treason; it would have been deemed a riot, and not high treason; but suppose the very same facts had happened in the year 1745, they would have amounted to high treason, and the persons would have been tried, found guilty, and suffered death as traitors; therefore I say, the complexion of the times speaks the intention of the parties; and if ever there was a period when a man was called upon to abstain from seditious practices, it is the present, when he has seen the misfortunes of a neighbouring country, when he has been warned by the king, in whom he has vested the execution of the law, has been warned by proclamations, warned by proceedings in every penal court in Great Britain, to abstain from every thing that looks like the appearance of sedition. I say, if at these times men are so perversely obstinate as to assemble such a meeting, it denotes a criminal intention much greater, than if the same things had happened at another period.

My lord, it is in vain for these gentlemen to say (which is the language ostensibly held by these persons), that their purpose was to petition parliament. I have no difficulty in admitting, what it is impossible to dispute, that every subject has a right to petition the king, has a right to petition parliament, and God forbid it should ever be violated; but we all know, that a petition to parliament may be made a colour for much mischief; we all know what happened in our own times, about twelve or thirteen years ago, when a set of persons assembled in St. George's-fields in London; what was their object? The ostensible language was to petition parliament for a reform of grievances, or for something *not so bad*, to prevent parliament from altering the law; they assembled as petitioners; and they concluded, with besieging the legislature, with insulting the members, and in a few days, spread fire and bloodshed through the British empire.* God be praised, there is now no danger, I hope, of any thing of this kind; but I mention it, to show your lordships what crimes may be committed under this pretence. I trust in God, that here there is no danger; and I trust that, at present, notwithstanding the spirit of sedition, which has gone forth, and been propagated industriously among the uninformed part of the community, the constitution is too firmly established upon the great basis of natural justice, of the common good, and of liberty,—that rational liberty, which is compatible with a regal government; I say, it is too firmly established, and too strongly fixed upon the hearts of the people to be shaken by such instruments as these. Although the government is not in danger, the attempt to shake it, though impotent, I trust is not the less criminal,—is not the less libellous.

I have made these observations, in order that the jury, when the cause must go to proof, as no objection has been made to the relevancy, that they may be able to fix their minds upon those parts, which are the essence of the charge; and if I have mistated any thing, I am under your lordships correction.

Lord Justice Clerk—You have given us a very good commentary upon the indictment; but there is one part which you have not read, and I want to hear your commentary upon the words of it. "And now if they will not manfully retract that very impolitic step, and immediately join their influence to the only measure which can prevent farther calamity, if not anarchy and ruin, their pledge may be forfeited, and the Friends of the People will be blameless."

Mr. *Solicitor General*—That, whatever mischief happens, the blame is not to be laid upon the Friends of the People, because they have so good a cause.

Lord Justice Clerk—I suppose the Friends of the People might cut our throats with impunity; they would not be blameable.

Mr. *Skirving*—I should have been happy if the pleadings of relevancy had been before the jury. I think the jury are entitled to hear the relevancy, because the relevancy is a matter for the jury to consider; and the jury ought to be present, in order that no part of my cause be prejudged.

* See the Trial of Lord George Gordon for High Treason, vol. 21, p. 485, of this Collection.

Lord Justice Clerk—They are all present in Court.

Mr. *Skirving*—But they are not in court, my lord, nor upon oath; I am very willing, however, to say any thing that I have to observe upon the relevancy before your lordships; but, I certainly think myself bound to go over it again before the jury, after the oath of God is upon them. Not being accustomed to speak in public, I am not able to follow the solicitor-general in the long speech that he has made; but I have thrown my thoughts together, and shall beg leave to read them to your lordships, from the paper in my hand, if I am permitted.

In the mean time I would observe, that I am not accountable for the acts of the convention; I am summoned before your lordships as an individual, and I dare say, the convention are able to justify themselves for what they have done, when called before your lordships, and will certainly justify themselves. In that point of view, every thing that the solicitor-general has said falls to the ground. Any thing that respects me, in this convention, I am ready to answer for; but I apprehend there is nothing laid against me in particular that is worth the noticing. The solicitor-general thought it was unnecessary to say any thing with regard to the major of the proposition in the indictment; I have a very different idea of it; because, I suppose no indictment is properly laid, unless the major of the proposition in the indictment, answers to the major part of the proposition in the statute, upon which it is founded. In my indictment the crime laid is sedition—what this transgression is, we are left to discover by an investigation of the several articles in the minor part of the proposition laid in the libel; that is to say, from the overt acts charged against me in it, so far as the panel has observed in the indictment before this Court. But, surely the prosecutor ought to have specified the crime, as defined in some one or other of the statutes to which he refers, and which are presently cognizable in this Court, and in the transgression of which he wishes to prove that I have been guilty.

In the indictment, I am charged to compear in a court of justiciary, to answer for the crimes specified, &c.

Now, in the major proposition of the indictment, only one crime is laid, namely, sedition. Here you see crimes, not one crime, but crimes are said to be specified. Does the prosecutor intend to bring forward more than he has given me warning to provide my defence against? The Court surely will never permit him to do any such thing. They will not permit him to take me at unawares with a single charge, more than what is laid in his indictment. Now, this is sedition; and there is not a single thing more than sedition charged against me.

Sedition! I know not what the prosecutor means by sedition; for he does not attribute a single quality, either of mind or action, to it. I am not called on to declare any opinion of it; he only says, "WHEREAS," &c.—and he says no more. Surely, whatever idea he has of sedition, yet after describing it as a crime so heinous and so severely punishable, he never could intend, that the things charged in the minor proposition, went to make up any such heinous crime, or indeed any crime whatever. Would it ever enter into any person's mind to suppose, that acting in the capacity of secretary to a number of societies, my receiving a parcel of papers according to the first charge in the libel, from one of these societies, and showing them to a few of the persons entrusted with the business of the whole, in order that they might be able to give their opinion of them, when submitted to a meeting, was, in any degree, reprehensible? When the fiscal, upon information of the Dundee address, got a warrant to apprehend me for my concern in it, I narrated to the sheriff my whole concern in the matter, and he assoilzied me at once. But allowing that I had really been chargeable in the matter of the Dundee Address, would it not be both ungenerous and unjust, after citing me as a witness on the part of the Crown, carrying me to Perth, and inclosing me with the other witnesses a whole day, and after all, to bring me in as a party, upon the evidence of the very witnesses with whom I was so shut up, and consequently exposed to converse freely with them on the subject, being made to believe, that nothing I might then reveal, supposing I had been criminally concerned, could ever come against myself?

It would be unjust in the Court to admit such an unprecedented attack on any man; and it is hoped, that they will not indulge the public prosecutor in this; the more so, as the whole of this business is to be brought under the review of parliament.

As to the next thing, the hand-bill, by which some general convention is said to have been called, though I know of no such meeting called by that bill; the prosecutor knows well, that he can neither instruct that I was the author, nor, in any degree, the publisher of it. And though I had been both, it is not possible for him to prove, that I could be guilty of any crime in giving warning to my country of its danger, or in calling them to demand, in a constitutional manner, rights which it cannot be denied have been wrested from them, as appears from Wharton's motion in the House of Commons, which I beg leave to read.

"Mr. Wharton rose to make his promised motion. We heard, he said, on every side, of the glorious revolution in 1688, and of the constitution, as settled at the glorious revolution.

"It was a note which he had always listened to with pleasure, and he repeated it himself with rapture.

"But what was the rational foundation of

our satisfaction at the recollection of the glorious revolution?

"It assuredly was not, that the possession of the throne, and the regular hereditary succession to it, were at that time disturbed and interrupted. It was not that we expelled one king and one family, and appointed another king and another family in their room. The necessity of such changes was at all times to be deplored: and the events themselves could only be justified by the necessity.

"The only rational foundation of our approbation of that revolution must be, that at that time such principles were confirmed, and such wise and wholesome provisions made for our constitutional security and happiness, as might prevent all future necessity for a similar revolution.

"Whoever approved of that revolution, declared at the same time, that the constitutional provisions then obtained were wise and wholesome provisions; that they were worthy objects of a national struggle; that they not only justified resistance, but made it meritorious; and that they were cheaply purchased at the price of all the blood that was shed upon that occasion, as well as the dethronement of a guilty king, and the extirpation of his guiltless family. But an approbation of that revolution went still farther. It declared that if by any means,—by force or by fraud, by violence or by corruption—if these wholesome and necessary constitutional provisions should by any means be taken away or frustrated, the same objects would again justify the same national struggle, and the same extremities, unless they could be recovered and re-obtained by more gentle, more peaceful, and therefore more happy means.

"He asserted (and said he risked nothing by the assertion, for no man would be hardy enough to deny it, and he pledged himself to prove it in a committee of the House) that all that was valuable to the people of this country, all the provisions which were stipulated to procure the peace and prosperity, the individual liberty and the general property of the people of this land, had all been, since the revolution, taken away—All!

"He must intreat the attention of the House for a few moments, whilst he very briefly brought back to their recollection what this country established by the revolution,—first, To avoid all future mistakes, and that the contract between prince and people might be clearly understood, the revolutionists began by altering the oaths of the contracting parties. They altered the coronation oath for all future sovereigns in this realm: and they altered the oath of allegiance for themselves and for all future subjects. They cut up by the roots the damnable doctrine of passive obedience and non-resistance, by emphatically specifying and ordaining, that the following words of their former oath, (1st Willm. and Mary, ch. 8.) 'I declare that it is not lawful upon any pretence whatever to take up 'arms against the king,' &c. &c. should not from thenceforth be required or enjoined.

"It was not so much to relieve the conscience of the subjects, that these words of their former oath were selected, recited and abolished: for no oath of slavery ever did, or ever will, or ever ought to bind a nation, or an individual. It was something worse than perjury or sacrilege to keep an oath of slavery. This alteration was made to prevent the future sovereigns of this country from being misled, as the four preceding sovereigns had been, to trust to a senseless superstition about royalty, which though many persons for their interests have professed, no man of common sense ever entertained.

"Their next care was to provide for the due administration of the executive power, and the responsibility of its confidential advisers. They therefore enacted 12th William 3rd, ch. 2, that 'All matters and things relating to the well governing of this kingdom, which are cognizable in the privy council by the laws and customs of this realm, shall be transacted there; and all resolutions taken thereupon shall be signed by such of the privy council as shall advise and consent to the same.' Thereby guarding, as far as laws could guard, against that accursed engine of despotism, a cabinet council, or that more accursed instrument, an interior cabinet.

"Their attention was next directed to the double representation of the people; the only possible security for all their other provisions — their representatives in parliament and their representatives in courts of justice—the House of Commons and juries. They passed over untouched, and left as they found them, the nobility and the church; they were considering the solid and substantial parts of the constitutional edifice, and did not much concern themselves about the gilding and the varnish. They therefore proceeded to establish the principle of a fair, free, and frequent election of the representatives of the Commons in parliament, as might be seen by a reference to the acts passed in the first and second, and third years of William and Mary.

"And having thus, as they imagined, provided for the real election of the representative body in parliament, they secured the independence and integrity of that body after its election, by enacting that—'No person 'who has an office, or place of profit under 'the king, or receives a pension from the 'Crown, shall be capable of serving as a 'member of the House of Commons.' 12 W. 3rd ch. 2.

"Having thus secured the purity and independence of the people's representatives in parliament, they proceeded to the other important branch of their representation by jury; and they decreed, that juries should be fairly taken, without partiality; and should act freely, without influence. 1st. William and

Mary, ch. 2d. They also decreed, that excessive bail should not be required; that excessive fines should not be imposed; and that illegal and cruel punishments should not be inflicted; and to secure these objects, they ordained, that thenceforward the judge's commissions should be made, 'quamdiu se 'bene gesserint', and that their salaries should 'be ascertained and established;' in order to make the judges independent of the Crown. 12th William 3d, ch. 2.

"Now, all these provisions (the objects and consequences of the glorious revolution) would have no value; they would be nugatory and worthless; they would be a mockery; unless they went effectually to obtain and secure to the people of this land, these three important points: first, an honest and responsible exercise of the executive authority —secondly, real, independent, and faithful representatives of the Commons in parliament—thirdly, a fair and impartial administration of justice in the courts of law. We who had no predilection for any family whatever (except as connected with these objects); in the words of our ancestors at the time of the revolution, did now again—'claim, de-'mand, and insist upon all those, as our un-'doubted rights: the true, ancient, and indu-'bitable rights, and liberties of this kingdom.' 1st William and Mary, ch. 2.

"If then, by various means it had happened (as he asserted and undertook to prove in a committee of this House) that this provisional responsibility of the privy council no longer remains; that the election of the House of Commons is neither fair, nor free, nor frequent; that this provisional independence of its members is gone, and that the House at present swarms with 'persons hav-'ing offices and places of profit under the 'king, and receiving pensions from the 'Crown;' that juries are not fairly and impartially taken; that they do not act freely and without influence; that excessive bail may be, and has been required; that excessive fines may be, and have been imposed; that illegal and cruel punishments may be and have been inflicted; that the judges are not independent of the Crown; that pensions may and have been granted to some of them; and that lucrative offices may be and have been conferred upon others; by which means it cannot be said that their salaries are ascertained and established.

"If these facts were so, he held it to be the duty of all those who, without hypocrisy, praised the revolution, to endeavour to return us again to our constitutional situation at that period, and to recover those lost, or neglected provisions; that so we might effectually secure to ourselves and to our posterity, what our ancestors endeavoured at the revolution to secure to themselves and to us.

"He concluded with moving, 'That a 'committee be appointed to inquire, whether 'any, and which of the provisions made by 'parliament in the reign of William and 'Mary, and in the reign of William 3d, for 'securing the responsible exercise of the exe-'cutive authority; for securing a real, inde-'pendent, and faithful representation of the 'Commons in parliament; and for securing 'a fair and impartial administration of justice 'in courts of law; whether any, and which 'of these have by any means been invalidated 'or taken away: and to consider whether 'any, and which of those lost or invalidated 'provisions may be fit to be re-enacted and 'restored, in order that the people of this 'land may recover that situation and security 'in which they were placed by the glorious 'revolution in 1688.'"

N. B. It is worthy of remark, that at the time of the delivery of this judicious and constitutional speech, no reply whatsoever was made, nor has any sort of notice been taken of it, by administration, or by those in opposition.*

And sure there was no crime in receiving thanks for unremitted attention to duty. I know, indeed, it must have given great pain to the opposers of the Friends of the People to be told, as I shall also prove in their presence this day, that by opposing that wise association, they have brought their country to the very brink of ruin; and who now are entitled to the post of danger so much? But surely no man, unless those who were so forward in pledging their lives and fortunes for its defence, in his senses will offer the charge of crime, or guiltiness, to an anxious concern for the welfare of one's country, even though imprudently expressed, which, however, I do not think has been the case.

Much indeed is averred in the indictment, with the design of criminating the convention; but upon the most vague grounds. I am ready to answer for the association of the Friends of the People, and for all their proceedings from first to last, but at present I am indicted only as an individual. Let me be fairly indicted, as responsible for that convention, and I shall not decline to answer to any indictment; knowing well that the British convention is fully able to justify its proceedings through me, or any other person charged in their name. But, upon no principle of equity or justice, can any body of men, regularly associated, be condemned in any court, if not legally present. The public prosecutor, as usual of late, has frequently in this indictment, termed the Friends of the People, collectively, and individually, seditious and evil-disposed persons;—having purposes inimical to the happiness of the people and to the peace and happiness as well as to

* See, in the New Parliamentary History, Mr. Wharton's speech in the House of Commons, May 31st 1793. No debate took place; and on a division Mr. Wharton's motion was negatived, the numbers being, for the motion 11; against it, 71.

the constitution of the country, and too plainly indicating the same rebellious maxims which have governed, and do still govern the proceedings of the convention of France, &c.

That the British convention, however, is a seditious and unconstitutional meeting, remains to be proved, and cannot be proved, till the legislature declare them such; or until they shall be cited, tried, and condemned according to law. Till one or other of these events, they are to be held, in this court, and in the opinion of the public, as a constitutional society; whatever the lord advocate may allege to the contrary. And, therefore, as the Friends of the People must be considered in this court, a constitutional, legal, or allowable society, equally as any other society (presenting responsible persons of their number amenable to the laws of their country, for all their proceedings) every thing averred against the British convention, or their delegates, in my indictment, must go for nought in the present prosecution. For this same reason, and upon the same principle of justice, every thing laid to my charge in this indictment, as said or done by me in the meetings of that society, falls also to go for nought; unless it could be proven that I did things unwarranted by the association. In such case, if any thing so done by me in their meeting, could be proven to be contrary to law, then, as in justice, I would be liable singly; but not till then.

To go into the prosecutor's views in this indictment, would be to unhinge the very constitution of the country, and nothing but the most palpable inattention to the fundamental principles of the British constitution, or a seditious design to overturn it, could have dictated an indictment such as this which I now hold in my hand. Should such a proceeding be allowed, there is an end of liberty:—it would be a revival of the conventicle prosecutions with a vengeance. The lord advocate would only have to declare any association of of the people, a number of seditious and evil disposed persons; and to get a jury to find some obnoxious person among them guilty; and then every meeting of the kind would be deemed illegal and might be dragooned, as in the days of our fathers, without the roundabout way of obtaining a declaratory act of parliament. He might next, for instance, declare dissenting meetings illegal, and of a seditious tendency.

If then, my lords, every thing in this indictment, founded on the insidious and false assertions against the British Convention, falls necessarily to be expunged,—and it must be expunged, unless you are determined to condemn me, at the expense of that very constitution, by authority of which you sit there this day; and which proposition I challenge all my prosecutors to impugn;—what remains in the indictment against me? Little indeed against me, but much to my credit and honour. These matters being left out, which it concerns the convention to vindicate, there remains nothing more charged against me, that I need to waste your time in animadverting on. No idea of guilt, or even of fault, can arise in any man's mind on my conduct towards the civil magistrate, in the case referred to.

If the officer of a civil magistrate shall come to me and desire me to go out of my own house, I have a right to ask the reason; and if he can show me no warrant, I may turn him to the door as an officious intruder. If his master shall deign to come himself, and make the same demand, I have a right to ask him his authority likewise, and to treat him worse than his servant, if he show no authority; for no magistrate has any power but what the law gives him; and even that power, which the law does give him, he must likewise exercise, not as he chooses, but only as the law directs. The king's proclamation itself would be of no more force against me, than one from the provost of Edinburgh, and that would be nothing at all, unless warranted by law. Nevertheless, it is false, and altogether unfounded, that I any way contravened the proclamation of the sheriff and provost; though indeed I did consider it an unwarrantable, unconstitutional, and oppressive act; and which they had no authority to emit.—When apprehended by the warrant of the provost, and carried before the council for I know not what, though I afterwards found that it was for my advertisement of the 10th, they were satisfied that my advertisement was for calling a different meeting altogether from the meeting which they had taken upon themselves to proscribe; and they dismissed me, after giving me my dinner for my trouble. The advertisement was as follows:—

"Friends of the People. The general committee of your societies here, which should have met as usual on Thursday last, was necessarily postponed till Thursday first, by reason of the sittings of the convention. The British convention being now constrained to adjourn to the place appointed for its meetings of emergency, the general committee of the Friends of the People in and about Edinburgh, are requested to assemble in a house belonging to Mr. Skirving, their secretary, formerly denominated the Cock Pit.

"As our meetings are perfectly constitutional, and our proceedings such as we dare avow, the meeting will be held at 12 o'clock, noon.

"A full meeting is entreated, for the purpose of adopting measures for defraying the expenses of the delegates while attending their duty in the convention.

W. Skirving."

Edinburgh, Dec. 10, 1793.

Before coming away, the sitting magistrate did indeed signify, that they extended their act of supremacy against that meeting, as well as against the British convention; and

this new declaration I promised to read to the meeting when assembled, and leave it to themselves to judge what regard was due to it. I went accordingly, next day, to fulfil my promise. And knowing the irritation of the people's minds at the bashaw-like treatment which had been given to the British convention; and that they would not receive with respect the message I had received for them, in a hurry, before leaving my own house, I wrote the motion and proposal, which is narrated in the indictment, (see page 479) and which every person, not altogether blind with prejudice, must consider as a prudent proposal; and intended solely to prevent the collision of animosity, betwixt citizens and their magistrates.

When I came with my worthy friend, Mr. Charles Brown, from Sheffield, with whom I had met accidentally, I found the meeting house blocked up with an armed force; and seeing the people gathering fast, we made haste, for fear of tumult, which extraordinary measures never fail to produce in a populous city, to read, first the declaration of the magistrates, and then the above proposal. Upon the same being forced from me violently, but by whose orders I know not, we left them with it and set off. It was very fortunate we came off so soon; for the people were assembling from all parts so quickly, that their number would in a few minutes have been so great, as to embolden them to inquire and judge who were right and who were wrong in so shameful an affray. For this service to the magistrates, a number of town officers and soldiers were hurried after us, and seizing us, walking upon the street peaceably, led us, as condemned criminals, through the most public street, which, by the tumultuous running of the people from all quarters was completely alarmed, for every window was crowded with heads, the same as during the execution of a criminal. They were conducting us to the guard house, when Mr. James Laing, one of the town clerks, countermanded the procession to the council chamber. And after a consultation of the magistrates, held with the sheriff, crown officers, and the assessors, we were dismissed simpliciter.

Now upon what data can guilt be charged against me from any part of the whole of this procedure? It is impossible. Were the lord advocate ever so anxious to affix criminality upon me in these transactions, he would not be able. But although my guiltiness might be evident, what right has he now to establish it, after the magistrates have judged and acquitted me?

Upon the whole then, if the matters charged in the libel, taking in the circumstances attending them, or taking them up simply in themselves, as laid in the indictment, amounts to the crime of sedition, then sedition must be a very innocent thing indeed. Nay, if my conduct from beginning to end in this business is sedition, I glory in it, as the highest service of my life; and judge such sedition the highest virtue, because disinterestedly pursued to promote the public welfare. But in regard your lordships have again and again determined sedition to be the worst of all crimes, and including every crime destructive of society, and have again and again for this very crime inflicted punishments, in the eye of some even worse than death itself, I must insist, that as neither the crime itself, nor the law defining it and declaring its penalty are stated in my indictment, it is illegal, and ought therefore to be discharged—and, especially, in regard that possibly my jury, taking up the crime of sedition, as being merely the imprudently blaming the measures of administration may think it very expedient and necessary to find me guilty, with a view, in the present circumstances of the country, to strengthen the executive government, and to cast the balance of power into the hands of those, whom possibly on other occasions they would check, but at present judge it proper to trust to their prudent and merciful exercise of discretionary power. Some juries of late are said to have acted from such motives; and we trust, for the sake of justice, they have repented that they left to others the judgment which they were bound, by the oath of God to render to the accused themselves. And finally in regard this high crime of sedition is said to be punishable by acts of parliament, as in the charge upon the indictment (and indeed no punishment can be inflicted by any other authority), it is therefore indispensably just, and necessary that these should be precisely specified: or that the libel, as so laid, cannot be proceeded on, but is altogether futile and irrelevant.

If the term sedition be in any statute of our law, then it will speak for itself. It will be the major of the proposition in the statute; and the act or acts of the minor, will sufficiently illustrate what the legislature intended by the crime so termed; and if the acts, with the criminating circumstances of intention, described in the statute or statutes, be the same as those with which the prosecutor has charged me, I will necessarily be condemned. But if no such law is stated upon the authority of which alone this Court has power to act, and the public prosecutor will not point out any, in this case this indictment must be declared without foundation: for no libel is relevant, which is not a transcript of some statute, and that both of its major and minor. For, where no law is, there is no transgression. That is to say, the libel ought to state the crime generally—the law which makes it a crime—and then the overt acts, which being proved, are the transgression of that law, or laws, and which therefore constitutes the general crime libelled.

None of these are done in this indictment; and indeed it must be evident to the meanest capacity, that this very unprecedented libel could not have any legal statute for its data

and pattern; for what legislature, possessed of any political wisdom, could be so weak as afford a model for such a performance?

It would appear, that the lord advocate by one blow would cut off all communication of sentiment among the people. But surely your lordships will not support the doctrine, that exchange of sentiment among the people, or mutual discussion of argument in society,—the natural exercise and employment of those powers bestowed by the Creator—is sedition, or any sort of crime. Association is the natural inheritance of the brute creation; and would the lord advocate deny the blessing to his fellow-citizens? And if this privilege cannot be denied to any, why would he affix guilt to that mode of exercising the privilege, which his brethren think best adapted for the purposes for which it is vouchsafed by the Creator. It is an observation which I shall never cease to make, when I have opportunity, that the grand political consequences of the state of slavery, and that of liberty, or native effects of their opposite principles, are these: namely, that arbitrary tyrannical power separates the man from his brother, and infuses the selfish unfeeling principle more and more in the heart; but the principle of liberty—that true principle which Christianity implants in the soul,—the principle of liberty which Christ has restored, and by which he makes men free, is the loadstone which draws souls together; and establishes the social band which is the source of all morality. And accordingly we are assured, by a testimony which cannot deceive, that, as a certain token of the approach of those halcyon days, which we hope for, the influence of the uniting principle shall be remarkable. It was the signal, and the mean of our fathers' deliverance from popish domination. Its effects are now more wonderful; and, being in the present case altogether voluntary, and less constrained by party influence, promises a still more glorious deliverance; a deliverance not from one tyranny to embrace another, but a deliverance from the principle of tyranny itself; and which will establish the love of mankind. You would do well therefore not to be found counteracting the work of Christ in the earth. It may be the day of his coming which was to be thus ushered in. "Then they that feared the Lord spake often one to another, and a book of remembrance was wrote for them that feared the Lord, and thought upon his name."—It may be the day, the awful "day that shall burn as an oven; and all the proud and they that do wickedly shall be stubble."—Have they not been stubble in a neighbouring country? And should not you be instructed by the striking lesson before your eyes? If the public prosecutor then cannot invalidate these objections, which I have stated against the relevancy of the libel, and you are satisfied in your own minds, 1st. That as I cannot be tried upon accusations made against a long-allowed society, which has not as yet been tried, and legally convicted, unless I had been cited before you, as the proper and ostensible representative of that society, therefore the present indictment against me is illegal, and must be dismissed. 2d. That it ought to be laid aside; because neither the crime, in the major proposition of the indictment, nor the acts charged against me in the minor, are instructed to be referable to any statute, cognizable by this the court of justiciary. And 3dly. That though you might think the jury entitled to proceed in this trial, upon the idea which they must have, in their own minds, of the word sedition; yet, as they know not the idea, which the law judges have in their minds of this crime, no statute being libelled on, therefore by proceeding, they might be guilty of the grossest injustice; because they might find me guilty of what they would call sedition; and their idea of sedition being very different from that which the lords of justiciary have affixed to it in their minds, viz. that it is the worst of all crimes, and including all other crimes whatever, they might adjudge me to the utmost rigour of punishment; while they only intended to say, that I deserved some small check, to make me act more wisely for the time to come.

If it is true, what has been affirmed of the citizens upon some late juries, that they sought to petition for a mitigation of the sentence inflicted in consequence of the verdicts, which had in this manner been given, because they judged them altogether disproportioned to any idea which they had formed of the crime submitted to their cognizance; it follows that they injured their suffering brethren, *most unjustly;* and it can be no rational salvo to their mind, that they acted according to their light at the time; and that the extreme rigour of the sentence is chargeable not against them, but against the judges; and that for this obvious reason, that, in effect, they actually and legally adjudged their brother to be possibly ten times more guilty than they believed him in their conscience to be, since they exposed him to ten times more suffering than they thought he merited. Had they made a point to have the same idea of the crime charged that the law and the judges of the law would have of it—and this is the first duty of every juryman,—they would then have found a very different verdict; they would have found that he did not merit such a degree of punishment; that is to say, they would have found that he was not guilty of the crime libelled, as meriting such punishment.

This, therefore, I trust will be both a warning and a lesson to juries, that they wisely consider, first, what is the nature of the crime indicted, and the punishment that will be inflicted, if the same shall be proven; and then, whatever number of smaller crimes

may be proven against the panel, if the whole of these together do not merit, in their judgment, the punishment to be inflicted, they must find the panel at their bar not guilty of the crime indicted; that is to say, not deserving of the punishment adjudged to the crime charged in the indictment.

"The original intention of trials by jury was to guard against the partiality and injustice of magistrates and judges. The county courts, the members of which were the ancient judges of this country, became so exceedingly corrupt, that juries were invented to remedy the many enormities and oppressions daily committed by these courts. Formerly the juries of Scotland were impannelled in civil as well as in criminal actions. They are now limited to the trial of high crimes and misdemeanors."

"It is a common notion, that jurymen are judges of the *fact* only, and not of the *law*."

"It has, perhaps, been too much fostered by the injunctions of judges and magistrates. It is exceedingly natural, that plain simple jurymen should look up with veneration to the high rank and superior abilities of those men who are appointed by their sovereign to dispense justice over the nation. For this reason it is, that the Engiish judges are so extremely solicitous not to inculcate their own opinions on the minds of jurymen, but to leave their determinations solely to the dictates of their own consciences."

"To what end," said lord chief justice Vaughan, "are the jurors challenged so scrupulously to the array and poll? To what end must they have such a certain freehold, and be *probi et legales homines* (good and honest men), and not of affinity with the parties concerned? To what end must they have, in many cases, the view for their exacter information chiefly?—if after all this, they implicitly give a verdict by the dictates and authority of another man, when sworn to do it according to the best of their own knowledge? A man cannot see by another's eye, nor hear by another's ear; no more can a man conclude or infer the thing to be resolved by another's understanding or reasoning; and though the verdict be right, which the jury give, yet they, being not assured it is so from their own understanding, are forsworn."*

Sir Matthew Hale, in his Pleas of the Crown, remarks, "that it is the conscience of the jury that must pronounce the prisoner guilty or not guilty; and to say the truth, it were the most unhappy case that could be to the judge, if he, at his peril, must take upon him the guilt or innocence of the prisoner;" unhappy also for the prisoner; "and if the judge's opinion must rule the verdict, the trial by jury would be useless."†

"Though the proper business of a jury be to inquire into the truth of facts, it is certain that in many cases they judge of matters also of law or relevancy. Thus, though an objection against a witness should be repelled by the court, the jury are under no necessity of laying greater stress on his testimony than they think just; and in trials of art and part, where special facts need not be libelled, the jury, if they return a general verdict, thereby make themselves truly judges of the relevancy, as well as of the truth of the facts deposed upon by the witnesses. A general verdict is that which, without descending to particular facts, finds, in general terms, that the panel is guilty or not guilty." (Ersk. Inst. p. 741. § 101.) The same author remarks, that M'Kenzie "disapproves of this institution of juries, because it is hardly possible, in many cases, to separate the proof of facts from their relevancy, the last of which is frequently of too high a disquisition for such as are not learned in the law. But no man's life or fortune ought to depend upon too refined reasoning; and, if discerning the nature of crimes be beyond the reach of juries, which are presumed to consist of men of common understanding, how can our criminal law be accounted a rule by which every artificer and farmer ought to square his conduct?"—Ibid. p. 738.

"From these most respectable authorities, and many others that might, if necessary, be produced, it is evident, that jurymen, by the laws of their country, are expressly constituted judges, in all criminal trials, both of the *law* and of the *fact*. I shall, however, hazard a few arguments, derived from the nature and intention of trials by jury.

"To prevent the misapplication of law by judges and magistrates, was one of the great ends for which trials by jury were originally devised by the wisdom of the legislature. If, therefore, the power of judging of the law, as well as of the fact, were annihilated, the very intention of the legislature would be defeated; because the courts, and not the jury, would then be the sole judges. Intention is the essence of crimes. The facts libelled may be distinctly proved. But if, from particular circumstances, the jury are convinced in their own minds, that the panel either had no intention to commit a crime, or that the crime is not of so heinous a nature as to merit the punishment concluded for in the indictment, in all cases of this kind, the jury have not only a right, but they are bound, by the spirit of their oaths, and by the laws of God and man, to find the panel *Not Guilty* of the crime laid to his charge. When a panel is libelled for murder, and the actual slaughter is proved against him, yet, if the jury are satisfied that he had no design to commit the crime, it is their duty to *acquit* him; because, on this supposition, the intention is wanting, and, of course, the crime of murder has no existence. Again, suppose a culprit to be in-

* See the case of Edward Bushell, Vol. 6. p. 1012 of this collection.

† 2 Hale's P. C. ch. xlii.

dicted for robbery, or any other capital offence, and that the facts are clearly proved; still, as Mr. Erskine judiciously remarks, if the jury are convinced in their consciences, that the chief witnesses are either perjured, or that their evidence should not have been admitted, their testimonies ought to be entirely disregarded.

"Besides, if the powers of jurymen were limited to facts alone, why are exculpatory evidences permitted? The facts libelled may be fully proved; but the panel, in alleviation of his guilt, may bring such evidence as will either alter the species of his crime, or convince the jury of his innocence. When a jury are judging in a case of this nature, they not only deliberate concerning the two kinds of evidence, but they consider the nature of the crime, and the punishment that ought, or ought not to be inflicted. In all such cases, the jury must necessarily determine both the law and the fact

"I know it to be the opinion of many jurymen, that, after the Court admit a relevancy, they are bound by their oaths to find the libel either proved or not proved. But these gentlemen should consider, that their business is, to give a verdict of a very different kind. They are to judge both of the criminality of the culprit, and of his exculpatory evidence. The words, 'proved,' or 'not proved,' should be for ever banished from the verdicts of juries. A relevancy may be found, when the jurymen, who hear the indictment impugned, are of an opposite opinion from the Court. A crime may be libelled, when the facts related in the indictment, though completely proved, do not constitute the essence of the crime charged. Hence, whenever the minds of jurymen are convinced, that a relevancy has been improperly found, their verdict, however the proof may stand, should be, *Not Guilty*. Indeed, the expressions, 'Guilty,' or 'Not Guilty,' ought alone to be employed in verdicts. They are liable to no ambiguity, and never can embarrass a court.

"It is generally thought, and the maxim has received great support from practice, that, when a jury find a panel 'guilty,' but recommend him to the 'mercy' of their sovereign, the culprit must either be pardoned, or receive a milder punishment than death. The unhappy fate, however, of James Andrew, who was lately hanged in Edinburgh, though he had, in the strongest manner, been recommended to mercy, by the unanimous suffrage of his jury, must tend to remove this prejudice, and make jurymen very cautious of their conduct. When a majority of a jury believe in their consciences, that a culprit, though the crime libelled should be proved, does not deserve to be cut off from human society, by the ultimate punishment of the law, they should uniformly give a verdict, finding the panel *Not Guilty*. This is a high privilege, intrusted to you by the laws of your country, and you cannot be too anxious to prevent its infringement or violation. Consider, the moment you desert a panel by an indecisive verdict, your powers are at an end. Bestow, therefore, that mercy which you recommend, and which you think the culprit deserves, while it is in your power. Never trust to future contingencies of any kind; for the highest orders of men may have prejudices; a thousand fatal accidents may happen; misrepresentations may be given; the opinion of courts may not always coincide with that of the jury; even negligence of office has deprived men of existence, after the mercy of the sovereign had been obtained."

It was for this reason that I objected to the trial of the relevancy till my jury was impanelled, and that I shall yet bring the previous question under their review, if you shall at present give an unfavourable judgment; because I shall consider your doing so, as prejudging my cause in the most important article, and in all of which my jury alone are entitled to judge.

If then, gentlemen of the jury, you are of opinion with me, that, with regard to the first article charged, the Dundee paper, I have already been judged, and at any rate retained a witness against the person condemned for it; and which crime, in the opinion of all the world, is now sufficiently atoned for, by the punishment already inflicted. If you are of opinion, as you must be, that I cannot be criminated, merely for being a member of the British convention, unless that convention was found guilty, which cannot be found in this present trial, because I am not before the Court as responsible for the charge brought against it. And, lastly, my lords, as the charges respecting the contravening the authority of the magistrates of this city, is a matter entirely betwixt them and me, and as they have not joined the public prosecutor in this indictment, and indeed could not have done so, the matter having been already fully compromised betwixt us, you cannot avoid assoilzing me from the present charge, there not being a single thing more in the indictment against me. You are my sole and independent judges, my country. No court can restrict or control you. The lords of justiciary themselves are bound to declare, *that* to be law which you finally determine as your verdict.

If, however, on the other hand, you are of opinion, that the indictment as laid is relevant, I am ready to enter upon a discussion of every charge against me. Let us just now proceed to make up before you the defect, the constitutional defect of the indictment. Let the prosecutor state in court, his meaning of the word 'sedition,' his idea of that crime, as laid to my charge; what statutes it is a breach of, and the idea of criminality which the legislature has affixed to this crime, by the punishment annexed to it; or as the charge at the instance of the prose-

cutor states it, 'the pains contained in the acts of parliament.' I am far from wishing to escape trial. I rejoice to think, I will now have an opportunity to remove the public prejudices entertained against me, and that now my country shall recognize me to be, what my heart tells me I am, its disinterested well-wisher.

Permit me then, gentlemen of the jury,* to lay before you my own private opinion of the crime of sedition, the opinion which was expressed from the bench, and to intreat you to fix some precise idea of the same, as the standard by which to measure the degree of criminality, in the actions, with the circumstances attending them, which are charged in the indictment.

All crimes against the state may be divided into three classes; treason, sedition, and petty misdemeanor. But in order to fix guilt on the acts comprehended under these several heads, two things must enter into the description of them. 1st. Acts comprehended in the term of misdemeanor, must, in their consequences, or immediate effects, tend to stir up sedition. Those again, under the description of sedition, must, in like manner, run into treason. 2d. These overt-acts must severally appear to be performed, with the evil intention to promote higher crimes against the state. For example; a person may be bound in duty to say and do things directly contrary to the present government of his country, and which, in their immediate consequences and native tendencies, are evidently calculated to withdraw the affections of the governed from their governors. But here it will be admitted, by a Christian court at any rate, that one must obey God rather than man; and consequently it must necessarily follow, that, as a person so situated could not be indicted for any criminal intention, whatever tendency the things which he did conscientiously might have to alienate the affections of the people from their rulers, no crime could, in justice, be fixed on him. Would the prosecutor say, that the following anecdotes of duty and patriotism, which have been preserved as examples of that liberty wherewith Christ hath made his servants free, were sedition? I shall read a few of them: instance the prophet Isaiah, ch. ix. v. 13. "For the people turneth not unto him that smiteth them, neither do they seek the Lord of hosts: 14. Therefore the Lord will cut off from Israel head and tail, branch and rush, in one day. 15. The ancient and honourable, he is the head; and the prophet that teacheth lyes, he is the tail. 16. For the leaders of this people cause them to err; and they that are led of them are destroyed." Ch. iii. v. 12. "As for my people, children are their oppressors, and women rule over them. O my people, they which lead thee cause thee to err, and destroy the way of thy paths. 13. The Lord standeth up to plead, and standeth to judge the people. 14. The Lord will enter into judgment with the ancients of his people, and the princes thereof; for ye have eaten up the vineyard; the spoil of the poor is in your houses. 15. What mean ye that ye beat my people to pieces, and grind the faces of the poor? saith the Lord God of hosts." Ch. i. 21. "How is the faithful city become an harlot! It was full of judgment; righteousness lodged in it; but now murderers. 22. Thy silver is become dross, thy wine mixed with water. 23. Thy princes are rebellious, and companions of thieves: every one loveth gifts, and followeth after rewards: they judge not the fatherless, neither doth the cause of the widow come unto them. 24. Therefore, saith the Lord, the Lord of hosts, the Mighty One of Israel, Ah, I will ease me of mine adversaries, and avenge me of mine enemies: 25. And I will turn my hand upon thee, and purely purge away thy dross, and take away all thy tin: 26. And I will restore thy judges as at the first, and thy counsellors as at the beginning: afterward thou shalt be called, The city of righteousness, The faithful city. 27. Zion shall be redeemed with judgment, and her converts with righteousness."

Ezekiel, ch. xxxiv. v. 9. "Therefore, O ye shepherds, hear the word of the Lord; 10. Thus saith the Lord God, Behold I am against the shepherds; and I will require my flock at their hand, and cause them to cease from feeding the flock; neither shall the shepherds feed themselves any more; for I will deliver my flock from their mouth, that they may not be meat for them. 20. Behold I, even I, will judge between the fat cattle and between the lean cattle. 21. Because ye have thrust with side and with shoulder, and pushed all the diseased with your horns, till ye have scattered them abroad; 22. Therefore will I save my flock, and they shall no more be a prey; and I will judge between cattle and cattle. 23. And I will set up one shepherd over them, and he shall feed them, even my servant David."

Would the lord advocate take upon him to characterise these passages, as sedition? Would he impeach the servants of the Most High with this crime? This would be to impeach our Lord Jesus Christ himself, who not only commanded his servants to testify such things against the evil rulers of the day, but corroborated what they had done by his own personal deed, as we read in John.

John, ch. x. v. 7. "Then said Jesus unto them again, Verily, verily, I say unto you, I am the door of the sheep. 8. All that ever came before me are thieves and robbers; but the sheep did not hear them. 11. I am the good shepherd: the good shepherd giveth his life for the sheep. 12. But he that is an hireling, and not the shepherd, whose own the sheep are not, seeth the wolf coming, and

* Part of this pleading was delivered before the jury alone; but the whole is given here, that it may be seen at one view.—*Orig. Ed.*

leaveth the sheep, and fleeth; and the wolf catcheth them, and scattereth the sheep."

The true definition of sedition then must be, that which our own Scots statutes give under the head of leasing-making against the government of the country, with a bad intention. Speaking the truth can never be sedition; for truth, you know, is no libel. If his lordship means and indicts, in the word sedition, a higher crime than that in our statutes under the head of leasing-making, he ought now to declare candidly what he intends by it; and the Court ought to fix him down to such precise definition; and they must also declare the precise statute, or statutes, of which his crime, so defined, is a breach; for without stating the precise standard, by which the jury are to try my conduct, how can they judge whether I have transgressed? and how far? and how am I to justify my conduct, against the charge of having transgressed?

I know no law, either of God, or man, that I have transgressed, in the matter of reform. What is the law which his lordship thinks I have transgressed? Let him now declare it, if I have; and I will yet pass over the informality of its not being stated in the indictment; though, as I am no lawyer, it would be taking me rather upon too short warning. But if his lordship has no law by which to try my conduct, except his own opinions, and has raised this process against me, trusting that a jury in his sentiments will have the same opinion of my conduct, that he has formed, I will protest solemnly, that I cannot be tried but by the laws of my country; and as no law nor statute, is stated in the indictment as transgressed by me, I protest that my jury may not proceed to find a law in their own breast by which to try my conduct; because I hold it a privilege, of which a free man can never be deprived, that he may do any, and every thing not proscribed by the laws of his country. I cannot know the private sentiments of my judges, by which I would, in that case, be obliged to regulate my conduct, if his opinion was my law. And what is slavery but this?

Lord Justice Clerk.—There is one thing I want to know; he says, he was called as a witness;—was he examined?

Lord Advocate.—Palmer was brought to trial at Perth, and Skirving was included in the list of witnesses; but it was expressly directed, that he should not be called as a witness, unless it was found absolutely necessary to the conviction of Palmer.

Lord Justice Clerk.—That satisfies me;—I always understood, that examining a man as a witness, was an absolute preventative against his being called upon afterwards, by a criminal prosecution; but he was not examined, and therefore that satisfies me.

Lord *Eskgrove.*—The panel at the bar is charged with sedition, and he has declined to take the benefit which the laws of his country afford to every criminal; he did not think proper to apply for counsel; if he had, he would have received that indulgence; he is now brought before a jury of his country, and he will be allowed to bring any evidence he thinks fit, to alleviate the charges against him. My lord, I cannot think there is the least ground to doubt of the relevancy of the indictment. The gentleman says, it does not mention any particular act upon which it is founded—it is very true it does not, but he certainly does know, or may know, that the law of Scotland is founded on many grounds, besides that of acts of parliament; there are many things in it which are established by usage,—by the laws of God,—by the dictates of the consciences of men; and I believe, if there is a crime apparent to the sense of every man, this crime, under the name of sedition, is as well understood by every one in this assembly, as by any one of your lordships. I do not know what sort of government this gentleman would wish to establish in his new generation of government; but, I believe, never any government existed, which did not think it necessary to punish sedition among the people, which might perhaps go the length of overturning the government, which it does not always do;—it may have the tendency of an attack upon government itself, according to the nature of the particular charges; but to say, that an indictment charging sedition, is not relevant without an act of parliament, is contrary to usage, and contrary to law.

The first charge is, that of accession to the publication of Palmer's hand bill. As to that, a jury of the country did find, that it was a seditious libel. Had this gentleman been admitted a witness there, I certainly would not have allowed him to be libelled at the bar for that offence; but he was not examined, though he was cited as a witness.

The gentleman says, it is necessary that the British convention should be first tried, and convicted, before he can be charged, as an individual, with the acts charged to have been done in that convention. I do not understand that the convention is a body corporate, but a convention of individuals; we shall hear whether it was a convention met for bad purposes or not; and whether this gentleman was one of them. Suppose a meeting of persons assembled under any name, and they should resolve amongst themselves, that they would set fire to the city of Edinburgh; if the public prosecutor lays hold of one of the persons that are present at that resolution, would it be consistent to common sense, that he would have a right to say, I am not the representative of that meeting? You must bring them and try them, before I can be tried. My lords, it is not necessary that that should be done, if he gave concurrence to what was done in that assembly, that is sufficient.

These people have chosen to follow the example of the French convention;—the resolutions that were come to, in their society,

by order of the same convention, of which this gentleman acted as secretary;—those motions, those resolutions, and those speeches were published in a newspaper, by order of the convention with the concurrence of the panel. That is a circumstance that will merit the consideration of the jury, and the Court. In cases of forgery, which is one of those crimes, that we punish every day with capital punishments, is one of those things, which is of itself, in its nature a crime; if an hundred, or a thousand persons meet together, they may be able to make the forgery better, but if they use what they forge, if they publish it, and carry it into the world, then it becomes a capital crime at once, though it was innocent while it remained in their chambers. Those gentlemen meet, and resolve to do this and that, and the other thing, but they did not rest satisfied with that, but they choose a Gazette of their own, by which means they gain an influence upon the minds of the people; and they order it to be published.

My lords, taking all the circumstances together, it is, in the first place, for the jury to decide, whether the acts are proved; or how far they are proved; and, secondly, whether it proceeded from a seditious intention, or an innocent intention,—I should be very happy if this gentleman can bring evidence to vindicate himself. I am very sorry to see this gentleman at that bar, after the example of that trial at Perth, and another, which are the only two that have come within my knowledge. I am always extremely sorry when my fellow subjects are charged with crimes; but it is my duty, and my country calls upon me to sit here in judgment upon such offences. I should be very glad, if this panel can prove himself to be innocent; but, if be guilty, whether it is occasioned by a disorder of mind (for there are public insanities as well as private ones), or whatever it may, I pity the subject of it; but as a judge, I must conform to the law; every thing will come before the jury; and the panel will have the verdict of his country.

Lord *Swinton*. If there is any wicked and malicious attempt, by violence, to overturn or disturb the present peace of the country, or hurt the present government, that I understand to be sedition; as to the necessity of founding it upon any act of parliament, it is not necessary, though it is necessary for acts of parliament to try crimes at common law. As to whether the facts in the minor proposition come up to the offence stated in the major, I am of opinion, that all these charges come up, nay, go beyond the crime of sedition.

My lords, this hand-bill calls upon the landholder "to coalesce with the Friends of the People, lest his property be soon left untenanted: the merchant, lest the commerce of the country be annihilated; the manufacturer, whose laudable industry has been arrested in its progress: the unemployed citizen—the great mass of labouring and now starving poor, and, finally, all the rabble are called upon by the remembrance of their patriotic ancestors, who shed their blood in the cause of freedom." Calling upon the rabble! How are the rabble to do it? Can they do it in any manner but by outrage and violence? Is there any other instrument in their hands, but that of outrage and violence?

My lords, I cannot help taking notice of another thing. "Had certain gentlemen countenanced this association last year, instead of pledging their lives and fortunes to prompt a corrupt and ambitious ministry, to engage in a war which could only bring guilt and ruin on the nation, we might have been still enjoying uncommon prosperity, and a happy understanding amongst ourselves as brethren. And now, if they will not manfully retract that very impolitic step, and immediately join their influence to the only measure which can prevent farther calamity, if not anarchy and ruin, their pledge may be forfeited."—My lords, what was their pledge? their pledge was their lives and fortunes. If that is forfeited, that is to say they have forfeited their lives and fortunes, and the Friends of the People will be innocent:—innocent! of what? innocent of taking their lives and fortunes from them: that is the clear language of this paper, and sad language it is. If that does not breathe sedition, I do not know what does. I am of opinion that the libel is relevant.

Lord *Dunsinnan*. The facts stated in the minor proposition, do, in my apprehension, amount in a most aggravated degree to the crime of sedition; and there can be no doubt but this libel is relevant: and therefore, it must of course go to the jury. It is unnecessary to add any thing farther.

Lord *Abercrombie*. It is the province of the jury, and of the jury alone, to judge whether the facts charged in the libel be true, or not. The single point now before us is, whether those facts, do sufficiently imply the charge? My lord, upon this point, I should be sorry indeed to have the least hesitation; I believe, there is not now present one man possessed of common understanding, who does not concur in the opinions, which have been delivered by your lordships, that these charges do amount to sedition, and sedition of a most dangerous and aggravated nature.

My lord, before the alteration of the law of Scotland with regard to treason, I think that the facts charged in this indictment, might have been laid as treason. Nay, my lord, if a fact, which the solicitor-general stated, should come out in evidence, that the British Convention, as it is called, determined and resolved, that in the case of a French invasion, a convention of emergencies was to be called,—of course to assist that invasion,—I think, if that be a fact, the public prosecutor might have

laid his charge as high treason; but that is not the charge before us; it is a charge of sedition only, and I am of opinion it is perfectly relevant.

Lord Justice Clerk. My lords, after what I have heard, it is impossible to doubt that the fact charged in the major proposition is sedition. I am sure after the preceding trials, and the convictions following upon them, it would be unnecessary for me, to use words to satisfy your lordships, that sedition is a crime by the law of Scotland; and, as to whether the facts in the minor proposition, come up to the major proposition, I think this crime might have been laid as high treason. I am very clear it might, before the union. I will not say by the law of England, it would have been tried as treason; but I am sure it is sedition, both in Scotland and in England.

[The interlocutor of relevancy read.]

Mr. *Skirving.* I hold that the jury are judges of the relevancy, and that they are equally judges of the law, as of the fact.

Lord Justice Clerk was beginning to name the jury, when Mr. Skirving rose again, to object.

Lord Justice Clerk. I will hear you when the first five are nominated, if you have any thing to object.

Mr. *Skirving.* The objections which I am to make, being of a general nature, and not personal, I wish to state them before any of the jury are named.

Lord Justice Clerk proceeded to nominate the first five of the jury.

Lord Justice Clerk. Have you an objection to these five gentlemen.

Mr. *Skirving.* I object in general to all those, who are members of the Goldsmiths' Hall Association. And in the second place, I would object to all those who hold places under government; because it is a prosecution by government against me; and therefore, I apprehend, they cannot with freedom of mind judge in a case where they are materially parties.

Lord *Eskgrove.* This gentleman's objection is, that his jury ought to consist of the convention of the Friends of the People; that every person wishing to support government is incapable of passing upon his assize. And by making this objection, the panel is avowing, that it was their purpose to overturn the government.

Lord Justice Clerk. Does any of your lordships think otherwise, I dare say not.

Mr. *Skirving.* The ground of my objection to these gentlemen, was not, that they belonged to that association, by no means; but, because they have prejudged me, in striking my name out of their society.

Lord Justice Clerk.—I remember the same objection was stated by Mr. Muir; and was over-ruled.*

* See Muir's case, pp. 134, *et seq.* of this volume.

NAMES OF THE JURY.

Sir Andrew Lauder Dick, of Fountainhall, bart.
Sir Hew Dalrymple, of North Berwick, bart.
William Nisbet, of Dirleton, esq.
Alexander Mackenzie, of Seaton.
David Anderson, of St. Germains.
John Caddel, of Cockenzie.
James Craig, of Setonhill.
Francis Buchan, Sydserf, of Ruchlaw.
John Milne, iron-monger in Edinburgh.
William Lamb, upholsterer there.
Walter Brunton, sadler there.
Andrew Boog, cutler there.
Thomas Armstrong, coppersmith there.
David Milne, merchant there.
Edward Innes, confectioner there.

EVIDENCE FOR THE CROWN.

Alexander Morren sworn.—Examined by Mr. *Burnett.*

Do you remember in the course of last summer, receiving any paper, or address from the town of Dundee?—Yes, it was addressed to friends and fellow-citizens, from the Dundee Berean meeting-house; I got it from the post-office with a letter from Mr. Palmer, desiring me to get it printed.

Who did you employ to print it?—My brother John Morren printed it: there were I believe a thousand copies thrown off, but I am not positive. I was desired to give a few to Mr. Skirving; and I gave a parcel of them to a servant girl, that asked for them in his name.

How many were there in that parcel?—I did not count them, but I believe there were two quires, or two half hundreds.

Lord *Eskgrove*—They were printed in half sheets were they?—Yes.

Mr. *Burnett.*—Had you any conversation with him, before or after you sent this parcel?—I heard that he had received it, but I did not ask him.

Did you see him after you received Mr. Palmer's letter?—Yes, I called upon him, and did not see him; and he then called upon me, and I showed him a copy of the address; he said he would see if some friends of his would approve of it, he would let me know how many I was to keep; and a man called afterwards and told me I was to keep a hundred copies for the society. I was to have sent them; but the girl came for them, and I gave her two half hundreds.

Lord Justice Clerk.—Was the parcel directed to Skirving?—No, it was not directed.

Cross-examined by Mr. *Skirving.*

Does it consist with your knowledge, that I knew any thing of that paper, before you mentioned it? Were you desired by the author of it, to take my advice in any respect?—

No, I was not. I was uneasy that Mr. Skirving did not call upon me; and therefore I called upon him. I was affronted that he did not approve of them; for I approved of them very much myself.

How do you know that that girl, and that man were sent by me?—I do not know; they came in your name.

James Kidd sworn. — Examined by Mr. *Burnett*.

Are you acquainted with Mr. Skirving?—Yes.

Did you receive any paper from him in the course of last summer?—Yes.

[The paper being produced] Was that the paper?—I cannot recollect, it was about that size; after reading the first two paragraphs, I destroyed it.

For what?—Because I thought the language was too strong; and I did not like it.

Lord Justice Clerk.—Was it to that effect?—I do not recollect one word of it.

Mr. *Solicitor General*.—Do you recollect the substance of it?—No.

You recollect nothing earthly about it?—No.

Lord *Eskgrove*.—You say it was too strong; what was the nature of it?—As well as my memory serves me now, it was something about the Friends of the People, expressed in such language that I did not like it.

Lord Advocate.—Since this indictment was served upon the panel, have you had any conversation with him, with any of his friends, or with any of the other witnesses with regard to what you would say upon the subject?—I have had no conversation with him, nor no person has instructed me what to say upon this subject.

I ask you again, have you had any conversation with any of the other witnesses, with regard to the subject of this trial?—No.

Were you ever called upon, within this week, to attend a meeting of the witnesses upon this trial?—Upon my word, I never was.

Do you know a man of the name of Robb, that lives upon the South Bridge?—I know the man by sight. I was in his house about eighteen months ago.

Were you there last Wednesday?—No, I was not.

Cross-examined by Mr. *Skirving*.

Did I give you this paper, or did you come and get it from me?—I went up to ask the panel how he did, and he asked me if I had seen that; I asked him what it was, and he said I might take it home and read it.

You said, you destroyed it because you did not like the language, and that you only read the two first paragraphs. I shall read as far as that, and then ask you a question [reads them]. I want to bring to his recollection, that this was not the paper. Is there any part of what I have read that you think objectionable?—All I can say is, that as far as I read, I did not like the language of it.

Were you a member of one of the societies of the Friends of the People?—Yes, I was once.

[The petition of the panel to the Court, when apprehended in gaol read].

Joseph Mack sworn. — Examined by Mr. *Burnett*.

The witness proved the declarations of the panel.

Were you employed in the execution of a warrant issued, the beginning of December last, by the sheriff of Edinburgh, against the panel?—Yes, I accompanied Fraser and Dingwall, to his house early in the morning, and found him in bed; it was a warrant for seizing the panel, and such papers as we should find: we put the papers in two bags, sealed them, and carried them to the sheriff clerk's office.

Were they sealed up in the presence of Mr. Skirving?—Yes, and they were produced before him, in the sheriff clerk's office.

Were you present when the bag was opened?—I think so, but I am not sure of this.

Was Skirving present when the bag was opened?—Yes, I am sure of that. The papers that were thought material were put into an inventory, and those that were not, were returned to Skirving; the inventory and declaration is contained in one. Mr. Dingwall wrote part of it, and I wrote part of it.

Look at that?—This is the general inventory in my hand-writing, and this is the declaration that was made at the same time.

Did you identify those different documents in any way.—Yes, myself, the sheriff, and Mr. Dingwall put our initials upon them; and upon those that were the most particular ones we put our names at full length.

[The witness then examined the papers with the inventory, and substantiated them all except article 24.]

Cross-examined by Mr. *Skirving*.

When this declaration 31st July was given in, you were present?—Yes I was.

Was I at that time dismissed simpliciter?—Yes, you were not laid under bail at that time.

Was I apprehended under a warrant?—I believe you were.

You said you were present at the opening of the bags?—I cannot speak positively to the bag being opened before I came, or after.

John Dingwall sworn.—Examined by Mr. *Burnett*.

Do you remember a warrant being issued in December last against the panel?—There were two different warrants, I remember particularly the last was upon the fourth of December, and was executed on the morning of the fifth; I was present at the execution

of it, the papers we found we sealed up in the presence of Mr. Skirving, and put my seal upon one part of the bags, and Mr. Skirving put his upon another; I saw the bags after they were brought to the office; and they were entered into an inventory.

Were you present when the bags were opened?—Yes, and Mr. Skirving too.

Did you sign this general inventory or any of the papers?—Yes.

Were you present at the declaration to which that inventory refers?—Yes, I wrote the first part of it—it was emitted freely and voluntarily, and he was sober and in his senses.

Were the different articles in the inventory authenticated?—did you mark them with your initials?—Yes.

[The witness then examined them with the inventory.]

Cross-examined by Mr. *Skirving*.

Do you recollect, when I was desired to sign that declaration of the 5th of December, that I said I had made no declaration, and would sign no paper, and when the sheriff-substitute did put his name to it, I desired those who were present, to notice, that I had made no declaration, and would sign no paper.—I do not recollect it.

Lord Justice Clerk.—You did not take any thing down but what he said?—No.

Mr. *William Scott* sworn.—Examined by Mr. *Burnett*.

Were you present when these declarations were emitted by the panel?—Yes, they were free and voluntary, he was sober and in his senses.

Were you present when the bags were opened?—Yes, and the panel was present—an inventory was made out of them, and authenticated by the persons present.

[The witness examines them with the inventory.]

Lord Advocate.—Had you occasion to attend the sheriff and magistrates upon the 5th and 6th of December last?—Yes, on the evening of Friday the 6th, we having heard that the British convention had a meeting somewhere on this side of the town—I went with the sheriff and magistrates, and found them assembled in Lady Lawson's garden, about 7 or 8 o'clock; I went in, and I observed the panel and several others whom I knew; the chair was then empty, whoever had been in it before, and there was a call to the chair. Mr. Margarot * took the chair. The magistrates called them to be dispersed—Margarot and others said they were met for legal and constitutional purposes, and they would not disperse till they were compelled by force; and desired us to hear Mr. Gerrald's† speech, who had been speaking before we came in, and the magistrates told them that nothing of the kind would take place. There was then a general call for Mr. Margarot to take the chair, and Mr. Gerrald to go on. Mr. Margarot said he would not leave the chair till he was compelled. Mr. Davidson took him by the hand, and he then left the chair; upon this there was a call for Gerrald to take the chair, which he accordingly did; when Mr. Davidson required he would leave it, and insisted upon their dispersing.

Did you hear what they were met for?—Yes, that they were met upon some business relative to petitioning the king upon some subject. Gerrald likewise refused to leave the chair, till he was compelled; Mr. Davidson said, he supposed the same compulsion would serve him as had done Mr. Margarot—he took him by the hand, and he left the chair. Then Mr. Skirving called upon some one to take a protest against the sheriff; he called for a notary—but no notary appeared: somebody put them in mind that they were permanent, and said they would keep this in view though they were dismissed now—they would remember that they were a permanent convention, or words to that effect.

Do you know the house?—Yes, it was at Mr. Laing's, a wright, in a work-shop belonging to him. The panel had been apprehended the day before—was examined by the sheriff, and had been admitted to bail; he was apprehended as being a member of that convention.

Cross-examined by Mr. *Skirving*.

Did not you obtain a warrant from the sheriff to apprehend me, upon a petition given in by you, upon 31st July, relative to a paper published from Dundee?—Yes.

Did not your petition request the sheriff to commit me to prison?—It was the very purpose of the application.

Was I not dismissed simpliciter on examination, and was not committed to prison till eight or ten days after, when I attended again upon a citation of your own?—No; he was taken, but it did not appear that he was the author of it; he was let to pass, but upon finding that there was a correspondence carried on between him and Palmer, he was again taken up and examined; and a letter of Palmer's being found in his pocket, he was committed as a party to the publication of that paper, of which he received so many copies from Morren.

At what time was this?—In the declaration emitted 31st July.

Mr. *Skirving*.—I beg that my declaration at that time may be read.

[It is read.]

Mr. *Skirving*.—You see I took a knowledge of the letter at the very first,—I acknowledged every thing that was laid against me, and more—was I not dismissed simpliciter at that time, and was again taken up upon a new

* See his case in this volume, *infrà*.

† See his case in this volume, *infrà*.

petition, though no new matter was brought against me?

Witness.—We suspected he was possessed of that letter, and a warrant was issued to search his house, and the letter was found.

Did I not give up all the Dundee papers, and tell you I could not find the letter, but when I did, I would give it up?—Yes; but you never did, though it was found in your possession afterwards.

Was I not at that time dismissed simpliciter, that is, without being desired to come again?—You were only allowed to go and search for that letter.

The witness will recollect that he is upon his oath, and I ask him, if there were any such conditions?—There certainly was; you went away to find that letter.

Harry Davidson, esq. sworn.

[In his examination on the part of the Crown, confirmed the last three witnesses in every particular, except the last part of Mr. Scott's.]

Cross-examined by Mr. *Skirving*.

Were you informed, that we were met that night particularly about a petition to parliament?—Yes, I think it was Margarot who said, that they were then discussing a petition.

Was I not apprehended by a warrant issued by you, upon the 31st July last?—I believe you were.

Granted upon the petition of the fiscal, requesting me to be incarcerated?—I think it is more than probable that it was so, but I do not recollect.

Was I not dismissed upon the declaration I then made, without finding bail?—Yes.

Only eight days after, did I not appear before you again, upon the same subject?—Yes.

And you granted a warrant to search my house?—I certainly did grant a warrant to search your house, and to incarcerate you.

And of course, this was on a new petition from the fiscal?—I believe it was.

The right hon. *Thomas Elder*, lord provost, of Edinburgh, sworn.—Examined by the *Lord Advocate*.

Had you ever any occasion in the course of your duty, to disperse any persons in the month of December?—I had. I went with some of the magistrates and peace officers, to a mason lodge in Blackfriars wynd, on Thursday the 5th of December,—we went up to what I understood to be the chair, and asked "if that was the meeting of the delegates of the Friends of the People?" Mr. Skirving answered, I think, and said "Yes, they were;" and so did Mr. Paterson who was in the chair. Mr. Paterson soon after walked out, and the meeting called from all quarters for Mr. Browne to take the chair; who took it accordingly; and being desired to leave it, said, he had been placed there by the authority of the convention, and could not leave it till he was compelled by force. I went accordingly to the chair, to hand Mr. Browne out: there were three constables in the room at the time.

Did you see the panel there that night?—Yes, he said, They were a legal and constitutional meeting; and that they were upon business that was for the good of the country, drawing up an address to the king, or parliament, or something of that kind; they dismissed peaceably soon after; and I took the key away with me.—I heard one of the members in the corner of the room say, that they would adjourn to some place in the Canongate; upon that account, we sent down some officers to see if they did so, and were informed, that it was a meeting of a society for some charitable purpose, and not of these people, who call themselves "The Friends of the People."—I was informed, that the Friends of the People waited till that meeting was dismissed, and then they took possession of the place.

Had you information of any meeting subsequent to this?—Yes, we had people placed through the town to prevent their meeting again: and we heard that there was to be a meeting the next evening; but it being out of my jurisdiction, it lay more with the sheriff; and I went with the sheriff substitute to disperse them;—it was in a carpenter's shop. I saw several people there, whom I had seen the evening before, particularly Mr. Skirving, and I think Mr. Callender.

Did they call themselves "The British Convention?"—Yes.

Did they instantly disperse?—Yes; only as the evening before, desiring some force to be used by way of etiquette.

And Skirving was there that second night?—Yes.

Was any thing said of their meeting being permanent?—Not that I remember.

Did any body speak of a protest, and call for a notary?—I heard Skirving offer to take a protest both nights. In consequence of this second attempt, I issued a proclamation with the sheriff, to prevent their meetings the next day.

Was that proclamation attended to, or disobeyed?—It was disobeyed so far, that an advertisement appeared in the Gazetteer, on Tuesday following, the 10th, signed by Skirving, "calling a meeting of the Friends of the People, on the 12th;" in consequence of which, I issued a warrant against Skirving on Wednesday, the day after the advertisement appeared, when he emitted a declaration. I then issued an order, prohibiting him from calling that meeting at the cockpit.

Did you give him a copy of it?—He might have had it, if he desired it; it was read over to him, and I think he said, he would read it the next day.

Cross-examined by Mr. *Skirving*.

My lord, when you came to disperse the meeting in Blackfriars wynd, was it not given as a reason, why we did not disperse voluntarily, that it was a meeting of delegates sent there by other people upon important business.?—Yes, I believe you did say so.

That the business we were engaged in, and which was appointed for that night, some days before, was about petitioning the House of Commons?—I believe, words to that purpose might have passed, but I cannot be positive.

Upon your saying, that you must use force, did I not move, that as we had neither inclination nor ability to oppose force, any sign, such as your going up to the chair, should be considered as force?—I did not hear any such thing: I know, both you and Mr. Brown said, you would not go without force.

You must recollect that the motion came from me, that we should disperse peaceably?—No, I believe Mr. Aitcheson was the person; he said it was the same thing whether they went out, or whether they were compelled to go out.

Do you recollect saying, that you had jurisdiction over a public-house, but not a private-house; and I said, we considered this as a private-house?—I believe you, or some other body, did say something to that purpose.

Was I not apprehended upon a petition of the fiscal; which petition prayed a warrant of commitment?—Yes.

Was there an order given by the magistrates, not to show the warrant?—I know nothing of such an order; I should rather think the order would be to show it.—I really do not know.

A declaration was taken from me at that time, and the affair at the cockpit was afterwards?—That at the cockpit, was taken by some other magistrate.

And I was dismissed simpliciter?—You certainly were, that evening.

And there was no action since commenced against me, at the instance of the town counsel?—Not that I know of.

Neil M'Vicar, sworn.—Examined by Mr. *Burnett*.

Had you, as a magistrate, any occasion to attend my lord provost at any time in December last, to disperse any illegal meeting?—Yes, I attended my lord provost to Blackfriars wynd: Mr. Paterson was in the chair, the lord provost went up, and asked him, if it was a meeting of the people, styling themselves "The British Convention;" and he said it was; that they were met for a constitutional purpose: and particularly, that evening, they were met to petition the king for annual parliaments and universal suffrage;—my lord provost desired he would quit the chair; he said, they had not broke the peace in any one instance, and it was a rule in the convention that no one should leave the chair without the orders of the convention, unless by force; my lord said, if he would not without, force would not be wanting. Mr. Paterson moved, that they should depart peaceably; he said, it was the duty of every body to be submissive to the magistrates; this was not in general agreeable; and Mr. Paterson having left the chair, there was a loud cry for the chair, Mr. Browne was called to it by a general voice; he addressed the meeting, and said, as he was called to the chair by the general voice of the meeting, he would not leave it, but by force; and immediately after, lowering his voice, and speaking to the provost, he said, any sign of force was sufficient. Soon after, the lord provost said, I will act as chief constable myself, went up to the chair, took Mr. Browne by the hand, and gently pulled him away; after which the meeting dispersed.

Was Skirving there?—Yes.

Did you hear any person speak of a protest?—No, I did not.

Had you occasion to go to any other place the night following?—I went the night following, to a carpenter's yard.

Did you see Mr. Skirving at that meeting?—No, I saw Mr. Callender and Mr. Margarot; the meeting was dispersed that night; and the next day in consequence of a proclamation from the magistrates, Skirving emitted a declaration in my presence, voluntarily and freely.

He was sober, and in his senses?—Yes; I do not know whether it was read over to him, I was not present.

Cross-examined by Mr. *Skirving*.

I beg the latter part of my declaration before the magistrates, of the 11th December, may be read, to refresh the witness's memory, as he seems to have forgot a circumstance?

[It is read.]

Does it consist with your knowledge, that the meeting which I called by that advertisement, was totally distinct from the British convention?—I remember very well, that you were at great pains to convince us, that it was not the same meeting.

Mr. *Burnett*.—Was there a declaration read over to the panel on the 12th, as far as you recollect?—I cannot say.

[The declaration read.]

Mr. *Skirving*.—Does it consist with your knowledge, that the fiscal gave in a petition complaining of my having put in that advertisement, and craving, that I should be brought up and punished; and that a warrant was issued, and I was examined upon that petition?—Yes, you were brought up in consequence of that.

And there is no process on that account against me in Edinburgh?—Not that I know of.

And I was dismissed simpliciter?—I cannot say.

William Coulter, esq. sworn.—Examined by Mr. *Burnett*.

Does it consist with your knowledge, that a proclamation was issued against the people calling themselves "The British Convention?"—Yes; on the 11th of December, and on Thursday the 19th, soon after 12 o'clock, I went to the Grass-market, where there was a great crowd assembled at the entry of a close leading to the cockpit; and Mr. Skirving was reading to the people a paper which he had in his hand;—when I got into the heart of the crowd, I begged that he would desist, which he did; and some of the peace officers began to take the paper from him by force. I waved my hand, and desired them not to use any force against Mr. Skirving, unless he chose to give it up, which I believe he did. Mr. Skirving was, at my desire, brought before me, in the council chamber, and examined; and was afterwards carried to Goldsmiths-hall.

Was that declaration made in your presence?—Yes, this is my subscription to it; it was freely and voluntarily emitted, and he was sober and in his senses.

[Shows him a paper.] Was that the paper you took from the panel?—I believe it is.

Cross-examined by Mr. *Skirving*.

Was I apprehended upon a warrant on the Wednesday, and sent to the council chamber?—I do not know upon what warrant you were apprehended—I did not see the warrant.—I was present at your declaration.

And I was dismissed without bail, or any new process of law instituted against me?—I know of no other process.

James Laing sworn.—Examined by Mr. *Burnett*.

Did you attend the magistrates to the Grass-market at any time?—Yes, to disperse an illegal meeting on Thursday, the 12th December; they were assembled in a close that leads up to the cockpit. I saw Mr. Skirving reading a paper; Mr. Browne was on his left hand, and a magistrate came forward, and spoke to Mr. Skirving, took hold of his hand, and he put the paper in his waistcoat pocket; he had read one side, and had turned it to read the other.

Was he afterwards apprehended?—Yes.

Were you present at his examination.—No, I was not.

[The paper produced in court; see indictment, page 479.]

Cross-examined by Mr. *Skirving*.

Do you remember the first day that I was examined after you came in, I desired a copy of it, that I might read it?—I do.

Does it consist with your knowledge, that I did not read it?—No, I did not see you read it.

William Rose sworn.—Examined by Mr. *Burnett*.

Were you, or are you a member of the meeting of the Friends of the People?—I am.

What is your profession?—A clerk in the Gazetteer office.

Look at that paper, 4th October 1793. Who is the author of that hand-bill?—I am the author of the first column, or half of it.

By whose directions did you compose it?—By no person's directions.

To whom were you to submit that composition?—To the Friends of the People, in the mason lodge, Blackfriars wynd, at a general meeting at which I attended, I gave it to my brother to read it.

Was the panel a member of that meeting?—I believe he was secretary.

Do you know who composed the second part of this paper?—I do not know.

Does not it consist with your knowledge, that that hand-bill was circulated?—I have seen them about the streets.

Have you occasion to know where it was printed?—Yes; in the Gazetteer office.

Had you any concern in the printing of it?—No.

Was Mr. Skirving's name annexed to it?—It was, in the printed copy.

Do you know who paid for the printing of it?—To whose account it was put?—I rather think, but I do not know, that it was put to the society of the Friends of the People.—I am a clerk in the office, but I do not manage that part of the business.

Who does?—Mr. Scott.

Had you any conversation with Mr. Skirving about it?—I do not recollect that I saw him at that time.

Were you a member of the convention of the delegates of the people, the British convention?—Yes I was, I attended it the first day.

Was there any subsequent convention met afterwards?—Yes, there was.

And the re-assembling of the whole convention, do you recollect where they met? it was this winter, was it not?—Yes.

Did you attend that meeting?—I did.

Who acted as secretary to that meeting?—Mr. Skirving; I do not know whether he was secretary, but he acted in that capacity.

Were there any other secretaries, assistant secretaries, or depute secretaries, or substitute secretaries, who acted at that meeting?—Yes; Mr. Aitcheson was appointed by the meeting to assist Mr. Skirving.

Any body else?—You, or your brother?—I never did. My brother used to take notes; and several other persons did the same: I do not recollect who they were.

Were their accounts, to your knowledge, of the proceedings of this convention published weekly in the Gazetteer, or abstracts?—Yes.

Do you know that there was a scroll of mi-

nutes made up at each sitting?—Yes, there were, which were sometimes read at the next meeting, and sometimes not.

Were there ever any corrections, or alterations, made upon the reading of these minutes?—Yes, by Mr. Skirving and Mr. Aitcheson: but there was a committee proposed to be appointed to revise the minutes.

Did this scroll of minutes contain an accurate statement of what passed?—They contained the substance of what passed.

Should you know the scroll of minutes again, if you were to see them?—I saw them in the sheriff-clerk's office.

Look if you know any body's hand writing there. [Shows him the scroll.]—It is like my brother's hand-writing.

Do you know Skirving's hand-writing?—I have seen papers which were said to be his hand-writing, but I never saw him write; this looks like what I have been told was his; but I cannot say, as I never saw him write.

Lord *Dunsinnan*. Do you think it is like his hand-writing?—I think it resembles it.

Lord Advocate.—Did you use to take down the debates of the convention in short-hand?—Yes.

For what purpose?—For publication in any way I thought proper.

In the Gazetteer?—Yes.

Was what was published in the newspaper, in general, a correct statement of what passed in the convention, as far as you know?—My notes were very incorrect; having taken a bad cold which affected my hearing, but I made them as near as I could.

Were you accurate with regard to the names of the speakers?—I cannot say.

Do you remember any motion being made in particular by Mr. Skirving? Did you ever hear of a solemn league and covenant in the convention (and consider before you give an answer) or any thing resembling those words?—I cannot say.

Did you ever hear him make any motion at all in the course of their proceedings?—There were so many spoke that I cannot tell.

What! did he sit dumb during all this time?—I do not recollect his making any motion.

Do you know of any committee called a secret committee, being appointed by the convention?—I recollect something of it.

Do you remember if the secretary was a member of that?—I cannot remember that.

Lord *Abercrombie*. You have sworn by Almighty God to tell the truth and the whole truth; if therefore you say, you do not recollect what you do recollect, you are guilty of perjury.—I am very much obliged to your lordship for the admonition; but I do not recollect that.

Lord Advocate. I ask you again, who were to be the members of that secret committee?—I cannot recollect that.

Do you remember what was to be the business of this secret committee?—It was to appoint a place of meeting for the members present.

Was this place of meeting to be made known to any body besides the members of this secret committee?—I suppose it was to be communicated.

And upon what occasion was it they were to meet think you?—In certain cases.

What cases?—Cases of emergency; I cannot recollect them all.

You need not repeat them all; but you must tell us some of them before we part?—One was, in case of a bill being brought into parliament, similar to the convention bill in Ireland.

That is one: now tell us any other?—I cannot recollect.

Upon your oath, did you ever hear of any other being mentioned?—I do not recollect them.

You have told us there were some others; now you must know something about them; was any thing mentioned about a foreign invasion? I ask you upon your great oath?—There was something about a foreign invasion, but I do not know that that was one of the cases of emergency.

How came it to be mentioned at all?—I cannot say; it might be at the beginning of a motion, or something of that kind.

Was it upon the occasion of debating upon a convention of emergency?—I cannot say.

Was a dispersion of the meeting ever given, as one of the cases of emergency?—There was some conversation about that, the night before.

I see you are very correct in some things, though not in others. Did you ever hear of the Scotch act of 1701, against wrongous imprisonment?*—I have heard of it.

Did you ever hear it mentioned in the convention, as one of those cases of emergency, if a motion should be made for suspending that act of parliament?—recollect yourself?—I think I do recollect it.

Did you ever hear of the habeas corpus act in England?—I have frequently heard of it.

Did you hear of it in the convention the other day?—Yes.

If a motion should be brought into parliament to suspend the habeas corpus act; was that a case of emergency?—Yes.

Were there any other cases of emergency mentioned?—I do not recollect any more.

Look at that, is that one of the papers published in your office?—Yes.

And these?—Yes.

Do you know if they contain the substance of the proceedings of the convention.—Yes.

What was the common name by which the members were addressed.—You will see in the papers.

But we want to hear from you?—Sometimes citizen.

Did you ever hear the word section used

* See vol. 19 page 52 of this Collection.

in the convention?—Yes, they were divided into classes, or divisions, or sections; a section consisting of fifteen or thereabouts: they met every morning, and reports made in the evening.

Were you a member of a section.—Yes, No. 4; we met in Simon's-square.

Were you ever present in the convention, when reports were made by other sections?—Yes.

Did you ever receive any strangers in the convention?—Yes.

Did you ever confer any mark of favour or honour upon any strangers?—No.

Did you ever hear or know that there was at any time honourable mention made of any person?—I cannot say that I ever did.

Did you ever see or know the honour of the sitting given to any person that came in?—No; I do not recollect it.

Have you had, since the indictment was served upon Skirving, a meeting of the witnesses on his trial?—I have been in company with some of them, but do not know of any meeting appointed.

Do you know a man of the name of Robb?—I have been in his house.

Were not you there last Wednesday evening?—Yes.

Was Mr. Margarot there?—Yes.

And Somerville?—Yes.

There were ten or a dozen of you?—Yes, I believe there was.

Do you know the purpose of that meeting?—It was new-year's day. I heard that they were to dine there, and I went over to them.

Mr. *Solicitor General*.—Who told you of that meeting?—I do not recollect I did not know of it till within an hour of the meeting.

You went upon the summons of you do not know whom—was it Mr. Margarot?—No.

Was it Somerville?—No.

Your brother?—No.

John Clark, the mason?—No.

Was he there?—No.

At that meeting, was this trial the subject of conversation?—It was mentioned that the trials were coming on this week.

And what was said about them?—I do not recollect.

And do you think we are to believe that?—I cannot recollect any thing particularly relating to the trial, or with regard to the people who have been summoned as evidences.

Was any thing said about what was to be the event of the trials; or about the evidence upon the trials?—Not that I recollect.

Lord *Dunsinnan*.—You will remember, that you are to answer at the great tribunal of Almighty God for what you now say.—I cannot recollect that any thing particular was said about it.

Cross-examined by Mr. *Skirving*.

If I put any questions respecting the convention, it is for the sake of occasionally taking any blame from them, and not as it respects myself, because I do not hold myself responsible at present for what they do.—Does it consist with your knowledge that ever a deputy-secretary was appointed by the convention?—No.

Did the convention ever acknowledge any minutes of their proceedings, till a committee of their own had drawn them up?—No, I believe not.

Did the convention appoint any names to be used by its members in preference to others?—No, not that I know of.

Did the convention appoint any established form of procedure, or were they only consulting about it?—If I recollect right, plans had been given in, but none of them were adopted before it was broke up.

Had you ever the least apprehension of any design to raise tumult, riot, or any thing like sedition, in all the proceedings you have seen of mine in that convention?—I never had the smallest idea of it.

On the contrary, have I not always urged attention to order, and regular proceedings?—I have always seen you attentive to good order, and regularity.

Does it consist with your knowledge, that meetings by delegates were preferred to general meetings, in order that things might be more regularly carried on?—I understood so.

And that the principal business of the convention from first to last, was an application to parliament for reform?—That was the only object that I know of.

This secret committee,—was it not surely a committee of confidence, and appointed for the purpose of timeous remonstrance, against a quietism-bill, by a speedy call of the convention the instant that a motion for such a bill passed the House of Commons?—I understood it so.

Alexander Aitcheson, sworn.—Examined by Mr. *Burnett*.

Are you a member of the society of the Friends of the People?—Yes; I became a member upon the memorable 9th of August, 1792. I joined the general association at that time. I afterwards attended at Barber's-hall; and afterwards, I joined the first meeting of the Canongate Society.

Were you a member of the British convention?—Yes, I was a member of all the three conventions by delegation from the Canongate Society.

Was the panel a member?—Yes, he acted as secretary.

Did you bear any office?—Not in the first convention, but afterwards in the second and third, I did assist Mr. Skirving. I took notes to the best of my knowledge of the business.

Were they in general as accurate as you could make them?—To say they were accurate, would be paying too great a compliment to myself; but I did it to the best of my abilities.

Look at the scroll of minutes, and see if it is your hand-writing?—Part of it is.

Do you know Skirving's hand-writing?—No, I do not.

Is that like it?—I cannot say; there were other gentlemen appointed at the last convention as assistants to the secretary? and I believe I could guess at Mr. Ross's writing; here are two or three pages of his; there are several other hands, but none that I know except Mr. Ross's and mine.

Is this any thing like any hand-writing that you know?—Is this like Skirving's?—It seems like a great many hands that I know; it is a very general kind of hand, and never having corresponded with him, I cannot swear to his writing; when I have been absent from the convention, and have come in after the sitting was begun, I have seen him write, but paid no such attention as to be able to swear to it.

Did you offer to give in a resignation of your title to be there as a member?—Yes, I found it inconvenient to my business, but they refused to accept it, saying, I might come when I could; and they appointed two delegates in my room.

Do you know if the minutes were revised by a committee of the convention;—Yes, before engrossing, they were always first revised by a committee; and ordered by the committee to be entered in a book, and afterwards printed.

Do you recollect any thing about the proceedings of the convention, particularly the names that the members went by?—I do not know what you allude to by that question.

Was Mr. Skirving called William Skirving, or what?—No, we were not a society of Quakers.

Did you ever hear the word citizen in the convention?—Yes, and I think it is the best title a man can have. I should blush for myself, as a burgess of Edinburgh, if I did not think so; and it is preferable to master, because we are commanded to call no man master.

Mr. *Solicitor General.*—Did you at any time hear any thing pass relating to a convention bill?—Yes, I remember a motion was brought forward, that in case a convention bill should be brought into parliament, some resolutions might be entered into, respecting it.

And that was done, was it?—Yes.

Did Mr. Callender make any motion upon that business?—I think he did, but I cannot say unless you will permit me to look at the minutes [looks over the minutes]. It is impossible that I should remember, what is here mentioned, because it is not in my hand-writing, I was not present at the time.

Do you recollect any thing about a motion for appointing a secret committee?—I recollect such a circumstance had taken place, when I was out; and when I came in, as soon as I had taken my seat, a motion was made by Mr. Sinclair,* that a motion that had now passed should be burnt. I got up and opposed it. I said that our proceedings were all free and open; and I was told that the resolutions had already passed. All that was meant was, that some place should be appointed for us to convene in, in case we should be stopped by any compulsive measures.

Was there any particular name given to this meeting?—It was a committee of secrecy.

But the meeting that was to take place, was called——Yes, a convention of emergency.

Did you hear or understand, why it was proposed, that this resolution should be burnt?—I never learned it any farther than this, that when Mr. Sinclair proposed its being burnt, it was resolved that the motion, instead of being burnt, should be reported and published.

[The witness read from the minutes the resolution that Mr. Sinclair moved, should be burnt.]

Look at the page before that?—That is not my hand-writing; I was not present, nor I do not think it is Mr. Ross's hand-writing.

Mr. *Solicitor General.*—Here it is said the members stood upon their feet, and solemnly, and unanimously, passed the resolution as follows, and then comes a blank of a page.

Mr. *Burnett.*—Do you remember any motions being made by Skirving in the convention?—Yes, many; but I have so bad a memory, that, unless there is something particular passed, I think no more about it. [Reads from the minutes.] "Citizen Skirving moved, that all the members, both of the convention, and of the primary societies, should subscribe a solemn league and covenant." But I remember very well, that Skirving was never called upon to explain what he meant by it. [Reads.] "Citizen Skirving moved, that the convention express its ardent desire, to cultivate a more close union with the societies in England, which was likewise unanimously agreed to."

Is that your hand-writing?—Yes.

[The witness read several motions, made by the panel, in the British convention, from the minutes.]

Lord Advocate.—Were you there the night on which Skirving and others were taken up?—Yes, I was there, when the lord provost paid us a visit.

Do you recollect any resolution that was come to by the convention, that if you should be dispersed, that should be one of the cases in which the convention of emergency were to meet?—I heard such a resolution.

Were you present in the convention, when you heard it?—I cannot say; I rather think not, but I think I heard it.

Do you know of any other cases in which they were to meet?—I have heard that one

* See his case in this volume, *infra*.

was, in case the island should be invaded by a foreign enemy; another was in the case of a convention bill.

Did you ever hear that the suspension of the habeas corpus act was one of the cases?—No.

Was the convention ever, to your knowledge, divided into sections or classes?—We were divided into divisions first, and then classes, and after that a section was thought to be a better name than either of the others, and, for the last fourteen days, the word section was used.

Was it common in the convention, to give in motions in writing?—Yes, that was an early rule adopted, that all motions should be given in writing, and signed.

Look at that paper? [showing the witness, Mr. Callender's motion respecting universal suffrage]—The indorsement, at the back is written by myself.

Look at that? [a motion by Mr. Margarot] —I have seen that motion before, but I had no hand in it.

Look at that? [a motion made by David Downie,* for regularity and order]—I think I recollect having seen that before, but it has not my hand to it.

Cross-examined by Mr. *Skirving*.

Did the convention appoint any name in preference to another?—No.

Were any minutes acknowledged by the convention, till a committee had revised them? —No.

Was there any appointment of you by the convention as deputy secretary?—No.

Was this meeting, which you say, was for a convention of emergency, to take place upon a motion to bring in such a bill, or upon such a bill being passed?—I cannot be certain, but I understood it to be when the bill had passed.

Did not you understand that it was a confidential committee, to be named with a view to have a place in readiness, that whenever the thing was mentioned in parliament, the delegates would know where to meet, in order to draw up a petition against it?—Yes.

Did not the convention frequently alter on one day, what they had done the day before? —Yes, many things that I have written in these scrolls, were dashed out by order of the convention, and others were left as they were, till the committee should revise them.

Had the convention finished their regulations and appointed them, or were they only consulting about them, when it was broken up?—They were only consulting about them, they had not finished by any means.

There is a motion which is said to be in my name; did you understand that I could have any other motive than that of regularity and good order?—The expression surprised me, and I took but little notice of it.

Did you ever suppose I had any thing like a seditious intention in any thing that I did? —So far from it, that I have heard you say, you were sure the only way to support the present form of government, by king, lords, and commons, would be to obtain a timely reform.

Do you remember when the motion of the duke of Richmond's plan of universal suffrage was acquiesced in, I agreed to it, because that nothing less could overturn the corruption?—Certainly; and we were sanctioned in that opinion, by what the duke and Mr. Pitt had published, a dozen years ago.

Mr. *Burnett*. Do you read the gazetteer?—Yes, but for several weeks past, I have received them and not read a single line.

Did you read the proceedings of the convention?—No, I did not; as they contained nothing new, I thought I would look at them at any time.

Do you remember receiving at any time, from the panel, an address from Dundee?—I remember I saw that paper at a meeting of the Edinburgh monthly committee; it was handed to me by one of that committee as a curiosity; I did not receive it at that time from Mr. Skirving; I advised against its being read in our meeting, as there was something in it which, I supposed, might be construed seditious.

Mr. *Skirving*. Does it consist with your knowledge that the convention had any concern with the paper, called the gazetteer?—As individuals we all wished it well as a paper, tending to the spreading of universal liberty, but not as a convention.

George Ross sworn. — Examined by Mr. *Burnett*.

What profession are you of?—A clerk in the Gazetteer-office.

Do you remember a hand-bill that was published in October last?—Yes.

Do you know who composed that hand-bill?—Yes, me and my brother; it was laid before the general committee of the Friends of the People, who ordered it to be printed.

Was Mr. Skirving present at that meeting? —He was; it was afterwards published in the Gazetteer. Mr. Skirving refused to put his name to that, or any other which was not produced by himself.

His name was afterwards annexed to it?—Yes; and there were some thousands of them published.

Did the convention meet in consequence of that?—No. There were several meetings of that sort.

Did you attend the meeting of the 29th October?—Yes, and Mr. Skirving was there; he was secretary to the convention of the delegates of the Friends of the People, but not secretary to the British convention; there was a scroll of minutes of their proceedings.

Were any of their debates taken in shorthand?—Yes.

Did you assist in taking them down?—No.

Was there a particular place assigned in the

* See his case in this Volume, *infrà*.

convention for the secretary and short-hand-man?—There was no place for the short-hand-man at all.

Were they published as minutes of the proceedings of the convention?—No. They were published as news.

Do you remember a motion for a secret committee?—I remember there was a motion about a committee for appointing the place of meeting of the convention, but I do not know how it came by the name of secret committee; I never knew the convention call it by that name.

Was the panel a member of that committee?—I cannot say.

Was Mr. Margarot a member?—I believe he was.

Was Mr. Browne?—I cannot say.

Do you know any thing of a convention of emergency?—Yes; in case any bill was passed to stop their meetings.

Was any other emergency mentioned?—No. That is all that I recollect.

Recollect yourself, if you ever heard of any other case of emergency?—The grievances of the nation.

Was any thing mentioned about foreign troops landing?—I never heard of a French invasion; I heard of Hessian troops and Hanoverians being brought into the kingdom; it was reported out of doors, that in that case the convention were to meet.

But you are sure you never heard of French troops landing?—I am sure of that.

Mr. *Solicitor General.* Did you write any of these minutes?—Yes, I did.

Look at that, and tell us what these words allude to: "the members stood upon their feet, and solemnly, and unanimously passed the resolution as follows?"—I do not know what it alludes to.

Was it the common practice to pass resolutions in that solemn manner?—I do not know any thing of it, I do not recollect what it was, but I suppose it was a resolution respecting the Irish convention bill.

What follows is a blank; can you explain that?—No, I cannot; I suppose it is misplaced.

Lord Advocate. Does it consist with your knowledge that this convention was divided into sections?—Yes; I called them sections myself; I was a member of a section which met in an empty house in the Gazetteer-office stair, opposite to one Mullo's; it was our business to choose a preses, and if any motion was made the preceding evening, we made it our business to discuss it, and make ourselves acquainted with it.

Did your secretary ever make a report to the convention?—Yes. [points it out in the minutes, and reads it.]

Did you ever admit any strangers in the convention to hear your proceedings?—Yes.

Was there any particular mark of honour, or attention paid to them?—No: no particular mark of honour, except a seat next the door. Did you ever form yourselves into a committee to take in a member?—We have formed ourselves into a committee to read a newspaper, containing Mr. Pitt and the duke of Richmond's resolutions.

Cross-examined by Mr. *Skirving.*

This report which has just now been read, you say was written by you. Was it wholly done of yourself, or was it directed by the meeting?—No; it was entirely of myself; the convention had no concern in it.

Was the committee on the convention bill to meet for any other purpose than to draw up a remonstrance against it?—I never heard of any other.

And was not this the reason for declaring the time of the meeting of the convention to be at the time of the motion for a convention bill, for the purpose of getting the remonstrance into parliament in time?—No doubt of it.

Mr. *Solicitor General.*—Did you ever hear in the convention, a proposal for a resolution to be burnt?—I do not recollect any such thing.

Did not citizen Sinclair make such a motion?—Not that I know of.

[Giving him a paper.] Is that one of the Edinburgh Gazetteers?—I believe it is; it looks like it.

Was it your intention to give the world an accurate account of these proceedings?—It was; as nigh as we could make it.

Mr. *Skirving.* Did the convention order the publication of them in the Gazetteer?—No.

Or had any concern whatever with them?—No.

Lord Advocate.—Was it known to the convention that your brother attended, and took notes for publication?—I dare say it was to many of them; he was a delegate himself.

Is the panel a subscriber to the Gazetteer?—Yes.

Was he frequently in the Gazetteer office?—Yes; but not so often during the sitting of the convention as before.

Do you know his hand-writing?—I cannot say that I do.

Look at the minutes, and see if you there see any thing like his hand writing?—I cannot say.

Look at the two last pages, and see if it is your brother's writing?—No; it is not.

Do you believe it to be Aitcheson's?—I believe part of it is.

Do you believe this to be Skirving's hand-writing?—I have seen much of his writing.

Is that like it?—I cannot say.

David Downie sworn.—Examined by Mr. *Burnett.*

Were you a member of one of the societies of the Friends of the People?—Yes; I was a member of the British convention, and I understood Mr. Skirving to be the secretary.

Look at that paper, and see if it was a mo-

tion that was made by you in the convention?—Yes, it is. [Reads it.]

Look at that, and see if it is a motion of your's.—It is. [Reads it.]

Mr. *Skirving*.—Did the convention pass either the one or the other of the motions you have now read?—To the best of my knowledge they did not.

James Robertson * sworn, and examined by Mr. *Burnett*.

Look at that printed letter, and tell me, if you know where it was printed?—I printed exactly such a letter as this.

Was it by Mr. Skirving's authority that you did it?—Yes, it was.

Is that his hand-writing?—I cannot say. I am a very bad judge of any hand-writing.

Did you ever employ him to keep your books?—He has directed newspapers, and assisted me; but I say now, as I did to the sheriff; I cannot positively swear that it is his hand-writing, but it is something like it.

[Showing him another paper.]—Is that his hand-writing? Upon the oath I have taken, I do not know; I do not think it is.

William Lind sworn.—Examined by Mr. *Burnett*.

You are apprentice to Mr. Robertson, the printer?—Yes.

Look at this, and see if it consists with your knowledge that that came out of Mr. Robertson's office?—Yes; it was printed there.

Do you know by whose order?—No.

Should you know Mr. Skirving's hand-writing, if you should see it?—No.

Did he never write about your master's office?—I believe he has, but I cannot swear to his writing. I have seen a great many people's hand like Mr. Skirving's.

Is that like his hand-writing? [Showing him a paper.]—It resembles it.

Is that like it? [Showing him another.]—It resembles it.

Cross-examined by Mr. *Skirving*.

Did you ever see me write?—Yes; I have seen you write two or three passages, or paragraphs, when the paper was going on.

And upon the recollection you have of what I then wrote, you think that is my writing?—It resembles it very much.

[A letter read—no address—signed Wm. Skirving.]

Lord Justice Clerk, to Mr. Robertson.—Do you know what number of copies were thrown off of that letter?—There were four or five dozen; I cannot say exactly.

[The panel's declaration of 5th of December read.]

Lord Justice Clerk.—Have you any exculpatory evidence to adduce, Mr. Skirving?—The day is already so far spent, my lord; and it appears to me so unnecessary to bring forward any exculpatory evidence, the public prosecutor having proved nothing criminal against me, that I shall entirely decline it, especially that even the witnesses for the Crown have exculpated me from every suspicion of seditious intention.

Lord Advocate,* [Rt. hon. Robert Dundas, afterwards lord chief baron of the Exchequer.]—Gentlemen of the jury; William Skirving, the panel at the bar, stands charged in this indictment with the crime of sedition; a crime which has been known and recognised by the common law of Scotland, and by the common law of every civilized government upon earth, from the earliest records to the latest period; which, when stated, carries along with it, to every person who hears it stated, as precise and distinct an idea as the crime of murder, of robbery, of theft, or any of the greater or lesser offences, which are the subjects of criminal law, and the objects of courts of criminal justice to punish.

The minor proposition of the indictment sets forth, fully and distinctly, the various facts and circumstances imputed against this man, and from which the legal conclusion is inferred, that he has committed the offence stated in the major proposition. To that charge he has this day, in your presence, pleaded not guilty: he has told us, indeed, within these very few minutes, that it would be idle and impossible indeed, for him to avail himself of that right, which the law of this country gives to every criminal, of exculpating, or even alleviating the crime charged, by any evidence he thinks proper; because he has had the confidence to state to you, that he does not think, nor does he see any thing, that has yet been proved against him, or any thing to be the subject of a proof in exculpation. Upon that point he and I are at issue; upon that point you are this night to return your verdict; and to speak, not with too much presumption, not with too much confidence, I cannot but express my belief, that this verdict will teach this man, and others his associates, that his conduct has been highly criminal, not innocent, as he idly pretends, and foolishly imagines you will believe; and that it is gross affectation in him to pretend that he is entitled, in your impartial judgment, to a verdict of not guilty, or to a verdict of acquittal, in respect that I have not proved my case to you. I must, for one, till taught otherwise by your verdict, against which it is impossible, either for the panel or me, to lift up our voice with any effect in this country; I must consider it in a very dif-

* See his case, p. 79, of this Volume.

* In the original printed account of this trial, the speech of the lord advocate was grossly, and, I believe, intentionally, misrepresented. That learned person, however, has obligingly communicated to me a corrected report of his argument, which I have, in the text, substituted for the other.

ferent point of view indeed. I shall, in the sequel, take the liberty of stating to you—and of demanding from you, a verdict in favour of the prosecution.—I shall state to you, that that verdict will be founded upon a body of direct parole, and written evidence, so satisfactory and conclusive, that, if your minds are not yet made up upon the subject, I trust, ere I sit down, to satisfy you, by selecting from that enormous mass of seditious, I had almost said treasonable matter, upon the table before you, that you cannot have a doubt upon your minds of returning a verdict in my favour.

I hope to be credited, gentlemen, when I state to you, upon my own behalf, that although this person, who in the end of July last was taken up for his accession to that paper, which constitutes the first article of the charge against him; and, although it was judiciously and properly directed, that he should not be examined as a witness against Palmer, who has already suffered a verdict of his country against him, as the person more directly concerned in the composition of that paper;—I say, that I hope to be credited when I tell you, that, if this man's conduct had been of a different complexion since the 13th of September last, the date of Palmer's conviction, although it was competent for me, at the meeting of this winter sessions, immediately to have brought my indictment against him, upon that fact alone, I trust you will believe me when I say, that if that had been the only criminal matter against him, I should not have found it expedient, proper, or necessary, to have preferred any charge against him on that account. I had erroneously imagined, that after the recent trials of Muir and Palmer, one in this city, the other at Perth, and the distinct and clear opinion two different juries, in different parts of Scotland, had given of the criminality of those seditious practices, in which these men, and this panel now at your bar, had so deeply and obstinately engaged; after the severe, but adequate punishment these two persons had been subjected to, the benefit of example would not have been thrown away; and that he and others, if not utterly reclaimed by these salutary warnings, would at least have adopted, from prudential motives, a more peaceable demeanor, and concluded their proceedings with more caution, and regard to the public quiet and public opinion. He has complained of me to-night, that I did not immediately bring him to trial in August last, for his accession to the offence of which Palmer has been convicted. I have now told him my reasons. Had he benefited by the salutary warning given him, I never should have troubled you or him on his past conduct, or thought it worth while to pay to it any more attention. But when, as I shall soon satisfy you, the conduct of this man has, since that period, only become more violent, daring, and dangerous, I trust you will think with me, that a dire and melancholy necessity indeed has been imposed on me of bringing him to trial for his subsequent proceedings, and that it was indispensable in me so to do; that he may either receive at your hands that acquittal, which he so confidently assumes as certain, or, if guilty, that punishment which his pertinacity in sedition, if I may so express myself, most undoubtedly merits.

Among other irrelevant and foolish remarks the panel to-day complained also, of a *prejudice*, as he termed it, under which the two former juries, and I presume, gentlemen, you likewise, entertained and felt against him and his associates; a prejudice in favour of the existing order of things, and of those evils which he and they avowed as their objects to have removed. In other words, that you are *prejudiced* in favour of the British constitution, as by law established, and are therefore not competent or unbiassed jurymen, to try such a case as that now under consideration. Upon my word, if you are not competent to sit as jurymen, I know not who are, or where they are to be found. Are we to take a jury to try Skirving from the lists on the table of the British convention? Is the sheriff, in returning his roll of 45 names on the assize, to inquire previously who are attached to the constitution, and who revile and conspire against it? to return only those of the latter description, and to exclude all the former? Are traitors only to sit as jurymen on trials for high treason? Long, I trust and believe, will this prejudice, of which the panel complains, subsist, in full force and vigour, through all ranks and orders of men in this free and prosperous country, notwithstanding the zealous artifices of him and others to undermine and destroy it; which, so far from having the effects intended, have only rivetted their attachment to it more closely, and added force to that national spirit, which would lead us all to defend that admirable form of government our ancestors purchased by their blood, and transmit it entire to our posterity; as safe against the republican and democratic doctrines, now so boldly preached up and acted on, as against the attacks of despotism, or the inroads of arbitrary power.

Gentlemen, the facts and circumstances stated in the minor proposition, though branched out into a variety of different articles, appear to me properly to be comprehended under two general heads.—His accession to the guilt of Palmer, in circulating (not composing) that hand bill, which is there stated; and, in the second place, his endeavouring from the 4th of October, 1793, when this hand bill was published, down to the 12th of December last, when he made that extraordinary appearance at the cock-pit in the Grass-market,—his endeavouring, I cannot indeed use the word endeavouring, but his persisting, during that period, in a seditious intent, manifested by his writings, and manifested by his conduct. And I will tell him

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more, if he is so ignorant of the law and constitution of his country as one would think from his declaration to night he must be, that if that meeting at the cock-pit had been followed by tumult or by insurrection, coupled with his conduct at the convention for several nights before, he would have stood now at this bar, charged with high treason; and, as such, would have suffered, if convicted, a capital punishment, under the statute of Edward 3d, because it could not be construed into any thing else but levying war against the king, under that statute; and, I will tell him more, that when these indictments were preferred against him and others, who now hear me, and who must soon stand before a jury of their country likewise, my learned friend and I had great doubts whether it did not warrant us in such a prosecution; however, we have taken the more lenient, and, I trust, the more proper line of conduct; he, and they, stand charged with sedition; but of the truth or falsehood of that charge, and the sufficiency or insufficiency of evidence, it is now my business to argue, as it will be hereafter yours to give your verdict.

Upon Palmer's paper, I shall offer but a very few observations; a respectable and an impartial jury, as all juries in this country are, and, as all juries must be, I care not for those injurious aspersions which men, such as these, presume to throw upon their conduct; and, as little do I care for those arts that have been made use of to intimidate them in their duty; I say, this has already been stamped by a verdict of the country, as a seditious, inflammatory paper; and the person who composed it found guilty, as such: but, God forbid, that the opinion of any Court, that the authority of any man, or set of men whatever, should influence your minds one moment, or prevent you from now taking that paper under your own serious consideration, and judging of its import and tendency, in a manner as free, and as untrammeled, as if it was now for the first time brought under public consideration. I desire you to read that paper. I desire you to consider with yourselves if it is a paper, such as Palmer professed it to be, merely for obtaining a reform in parliament; and which he gloried in the circulation of,—if you are of that opinion, it is idle to inquire whether the fact of circulation is proved or not; he is not only not guilty, but has done that for which he is entitled to praise, and which does not merit censure:—but you will peruse that paper; and, if it appears to you, as it does to me, as it does to the Court, by their permitting it to be considered as relevant, a most seditious and inflammatory libel,—to tell us, "The time is now come, when we are to assemble round the fabric of liberty to support it; that we are plunged into a war by a wicked ministry, and a compliant parliament;" when it is not the parliament alone, but the united voice of the country has justified us in going to defend ourselves in a war with a neighbouring nation; if that should be your opinion, it will be your business to inquire, how far the evidence brings it home to this panel. As to the libellous and seditious nature of the paper itself, I should think I obscured, instead of illustrated, if I did any thing but desire you to look upon it. You cannot but agree with me, that it is as seditious and inflammatory a paper as ever was circulated among the inhabitants of this country.

Gentlemen, among the papers produced, is one of the records of the court, a petition of the panel; he being taken up as guilty of an imputed offence, and after having it in his power to give bail for his appearance, he chose obstinately (from some desire of reform I suppose,) to refuse to give bail, and insisted on his immediate liberation; and that the officer of justice should be incarcerated in his stead; or, at least, insisted before this court that it should be served upon him. In that paper he tells you, that "the chief business of the Friends of the People, as preparatory to the reform in parliament which they sought, was the information of the public as to the grounds of parliamentary reform, its importance, and immediate necessity. Your petitioner, therefore, judged it to be his duty, as secretary, to submit every information to the public which he received, and thought calculated to illustrate these points; and the individuals and societies, who had it in their power to give such information, naturally transmitted the same to him as secretary."—Why, here is an explicit and an avowed declaration upon his part, that the information of the public, and the grounds of it were what he was bound to lay before them; and, if you consider that paper as such an information, as you will permit with impunity to be circulated through all parts of Scotland, I give up the question at once; you ought to return a verdict in his favour. He also adds, "Your petitioner has already suffered too much for attempting to prevent the overthrow of the constitution of his country, by the over-weight of any of the branches against the other, to be guilty of willingly assisting in any such design. He considered the paper complained on, as merely the strong effusion of honest hearts, alarmed by the measures of those in administration, judging the constitution in the utmost danger, and catching at the first grounds of alarm which presented themselves to their view."—This confession of his own is confirmed by one of the declarations just now read;—it is confirmed by the testimony of Morren, and of Kid, both of whom, though with considerable reluctance, deponed to their receiving such a copy of it from him; and that he was the person who appeared to have the charge of it. Morren indeed distinctly proves, that he received the paper from Palmer for publication, that he was desired to give so many copies to Skirving, if he called for it;—that he went afterwards to Skirving's house,—that Skirving sent somebody for it,—

that he sent him a hundred copies;—they are found circulating through the town, and when the repositories of Skirving himself were searched, the hundred copies were all expended to two or three, or something within half-a-dozen; you will consider if these necessarily were not all that remained out of the thousand copies which were thrown off; and, which these gentlemen were to send round to the public, to enlighten them on the important business of reform. You will consider whether you have not distinct satisfactory evidence, that as he received those papers, knowing the purport of, and glorying in them, whether the fact of his having circulated them, is not clearly and distinctly proved (not being contradicted upon the part of this man), beyond the possibility of denial.

Having said so much upon this part of the charge, I come to the most material, the most important part of it,—I mean all those proceedings from the 4th of October 1793, down to the 12th of December 1793, when the authority of the civil magistrate was contemned and despised; when nothing but the vigilance and exertion of the magistrates, to whom the country owes much for that public spirit with which they conducted themselves, could have dispersed this seditious, this illegal, and, I had almost said, this treasonable meeting. But the hand-bill of the 4th of October, is very candidly to-day owned by one of the Rosses; and I have no objection to give him the credit of that elegant composition. I only impute to the panel the criminality of having lent his name, as secretary of this general committee, to authorize its circulation into the world; and, as such, having become responsible for it. It appears from Ross's account of it, to have been wrote by both of them jointly; it was wrote the evening before the meeting of the general committee, at which Skirving is proved to have been present; and, though from a particular kind of frailty of memory, which seemed to distinguish both those able brothers, they did not precisely recollect every question which came from one side of the table, though, when they came to be questioned from the other, that recollection revived in the most extraordinary and most amazing degree; although they did not perfectly recollect what he said upon the subject, they only recollected that he would not put his name to any thing but his own composition; there is enough to show you that, if he would not as an individual, yet he had no objection to do it in his official capacity,—in which capacity he now stands at your bar, as secretary to the convention of the Friends of the People; it is perfectly clear that he never in the smallest degree complained of that seditious hand-bill being handed about with his name to it, by which he ratified and approved of the proceeding. He has not told you, nor dare he tell you that, when this paper was sent into the world with his name to it, he did, as every honest citizen ought to do, revoke it, and publish to the world who were the persons guilty of it; and therefore you must hold him as a person responsible to you, and responsible to the country for this hand-bill, circulated with his subscription annexed to it, and under his authority, though the two Rosses are perfectly satisfied that they wrote this hand-bill, and that Skirving did refuse in the meeting to sign his name to it.

Gentlemen, is it possible to read the concluding paragraph of this paper, coupled particularly with the preceding advertisement of Palmer's, in which he is proved to have so distinguished a share; is it possible to read the concluding paragraph of that paper, holding out a menace to an association, numerous beyond example, which took place last year, and to which every good and worthy man in the country, of all ranks and denominations was found a subscriber;—can you read it without discovering an insolent and audacious menace to them for that conduct? If these men, as states the paper, do not retract from that association, on themselves and on their heads be the consequences. And the society of the Friends of the People will now be innocent of these. And what was the purpose for which so numerous a body as the Goldsmiths-hall in this city, and the London tavern, were last December associated, which these Friends of the People dared thus to threaten with punishment and revenge? An association for the protection of liberty and property.

It also contains another menace, equally seditious, and equally illegal. It is true the inhabitants of this country have a right to petition parliament for redress of grievances, but is this, or any man, or any set of men whatever, entitled under this pretext, when the country is at peace and in quiet, to send such a hand-bill as this among the people,—to sound the trumpet of alarm among those who are contented and happy,—to threaten even those men who may, in the moment of delusion, have been led to join in their proceedings, but who became satisfied, as ninety-nine persons out of one hundred are satisfied, that their proceedings are not tending to reform, but to subvert the constitution of this country. I know well there are many well-meaning men, who having been misled by false reasoning, imposed upon by the glare of some man's sophistry, or the cant of some man's enthusiasm, have now withdrawn themselves from that society into which they had once been deluded, and that conduct which they had once been betrayed to follow. And how are such men, as choose to assert their freedom of withdrawing, equally as they did, in joining this society, to be treated, if they so venture? Mr. Skirving tells you in this advertisement, that those members who do not attend, or send an excuse, will be publicly called upon; and this is a paper of which thousands were thrown off, as Ross tells you; those men therefore, who choose to retract or alter their

opinions, who choose to come back and join the majority of the country, to be faithful and loyal to their king, and attached to their constitution, had this menace held out to them that they would be publicly called upon, in as public a way as this paper is circulated, to account for their conduct; intimidating them from following the dictates of their consciences, and exciting them to join in forming an arbitrary government, worse than that despotism, of which a neighbouring country affords an example; domineering over the minds and bodies of their countrymen, and owning no authority, but that which they mark with atrocious acts of injustice and cruelty.

Gentlemen, let us now come to the material point of the case; let us consider the proceedings of the British convention of the delegates of the people, associated to obtain universal suffrage and annual parliaments; a convention which, in its name and in its object, though the meeting was originally, and has for some time past, gone under the name of the Friends of the People, and only holding out, as their end, the obtaining a reform in parliament, has now, with an audacity which has excited, not the attention of this metropolis, not the attention of Scotland alone, not the notice of England only, but of Ireland and, I believe, of the whole empire at large; which has attracted the attention even of France itself, and been there the object of admiration;—a meeting which, in its avowed object, tends not to reform, as they pretended, but to subvert the constitution. Let these men argue as they please, let them declaim till they are sick, universal suffrage is a thing which the constitution of this country never did recognize, for the best of all possible reasons, because it is impracticable; and if ever attempted to be carried into execution, as it was well observed, by my eloquent friend to day, would tend just to the precise same effects and pernicious consequences, which we have seen, to the astonishment of the present day, in a neighbouring country.

Gentlemen, two things are to be materially weighed and considered by you upon this indictment.

In the first place, if the proceedings of that meeting, of which this man was a member, and not only a member, and an office-bearer in it, but, as I shall afterwards prove to you, in evidence, the ringleader, and chief instrument in calling it together, the first thing you must consider, with deliberation and care, is, was it, or was it not a seditious meeting? In this country you have always possessed the right of determining the law, as well as of the fact; your opinion must be made up upon the point. Is this meeting seditious or not? And, if you determine it in the former case, then you will inquire into the sufficiency or insufficiency of the evidence. It shall be my business to endeavour to satisfy you, that you have every evidence of the seditious nature of it that you can reasonably require, and that the nature of the case admits; more indeed than, I believe, could have been expected from a meeting, such as this, which, with all its avowed pretexts and pretensions, I will point out to you in several parts of their conduct, their own firm conviction, that they were acting a dangerous part; and that the conduct that they were following was not such as the law of their country recognized. It seems, from some parts of the evidence, which I shall immediately notice, that they could not even in these meetings stifle their own consciences; there was that silent monitor within which (with all that pretence of reform, and that confidence which some have expressed to day, of the legality of their proceedings), whispered to them this, that they were carrying on a kind of conduct which, if discovered, they must suffer for, and proves their own conviction of and sense of the seditious nature of their proceedings. In a country such as this,—not indeed in any country possessing an established system of government, and much less, in such a country as this, where the opinions of the people are made up upon the wisdom of that government, and are attached to it by the surest of all ties,—if the magistrates are active in the execution of their duty, it is not to be expected that any such meeting as this would directly avow an attempt to subvert the government, or constitution of this country; you may rest assured you will always find some pretext or other held forth to cloak their proceedings, till the moment shall come when they shall think it safe to avow them. Had we at present been trying the conduct of this man, by any thing which passed in the four first days of this convention, before they assumed that name which they have taken to themselves, and before they came to those resolutions, which I shall in the sequel read from the minutes, we should have had such a case before us that you would have had to decide whether they were really and truly meeting for the purpose of a reform, or whether they were acting under a mask for the purpose of destroying the government of the country. But from the date of the assumption of this name, and during the subsequent week, or ten days, these gentlemen have done away even the shadow of a mask over their proceedings; in every mode of their proceeding, every resolution which they adopt is framed directly and positively upon the model of the French convention; and I desire you to take this along with you, when you consider this subject, that although this meeting was illegal in every part of it, yet the main point of my charge against them is this, that being a convention formed upon the model of that now at this moment existing in France, and a nation with which we are at war: the panel who was their secretary, and all those who

engaged in it, have proved, if not *totidem verbis*, most clearly and unequivocally by every circumstance of their conduct, that their sole purpose and intention was, not a reform, but a subversion of parliament,—not a redress or cure of grievances, imaginary or real, in a legal, peaceable, and constitutional way, but a determined and systematic plan and resolution to subvert the limited monarchy and free constitution of Britain, and substitute in its place, by intimidation, force, and violence, a republic or a democracy, as wild, as cruel, as despotic, and as abominable as that which at this moment desolates France.

They make the use of the term citizen. A smile I observe to drop from the panel at the bar, and from his friends, who, I understand, are now sitting round him, and some of whom, I am afraid, must soon stand in his place, as if the assumption of the word citizen was of no importance, and as a very high, and a very distinguished member of this society, the deputy secretary, declared, that as a burgess of Edinburgh, he should blush for himself, if he did not think the name of citizen a good one. The worthy secretary, Mr. Aitcheson, is no doubt right: we are all, I should hope and wish, good citizens of Great Britain: but then, gentlemen of the jury, you must take into your consideration, in what sense the term is here used; and for this purpose you must recollect, that it is used in a convention, I maintain, professing purposes directly subversive of our established constitution, and utterly incompatible with and hostile to its existence. The term then ceases to be innocent, as when taken *per se*, and becomes a circumstance of incontrovertible evidence to prove the real objects and purposes of this assembly. Its use is one link on the chain of evidence, to show that sedition, if not treason, was the object. In that case it comes to be material, like the case put by my learned brother, that he who a few years ago, with a white cockade in his hat, should have marched to the Castle-hill of this city, and fired a few shots at it, would have been treated as a madman; but he who, in 1745, had been guilty of the same thing, would have atoned perhaps for his conduct with his life. The term citizen, of itself is no crime; but used in this manner, it is a circumstance, in the chain of evidence, to show that they are a set of French conventionists. I give them no other name; and that, as such, they are offending against the known criminal law of this and every other country upon earth; and, as such, are seditious. You find they have committees of finance, of instruction, of organization; in short there is not a single entry, not a single motion, not a single step taken by them which is not precisely formed upon the model of the French convention; they date their proceedings in the first year, not of liberty indeed, but of the British convention—members are admitted to the honours of the sitting, and, in short, every thing exactly upon that model.

Gentlemen, I stated to you, that the evidence in this case was not only credible, but, what is much better, it is written evidence, which cannot be mistaken, which must be true, and upon which, in the course of your duty, you are to form your opinion. Gentlemen, it was not till we had full information of the extent to which their proceedings went; nor, indeed, till they themselves entered in the Edinburgh Gazetteer, that which Mr. Aitcheson told you was a paper favourable to liberty and to reform, till they had entered in that paper the proceedings of their convention, that a warrant was issued for their dispersion, and for the detention of their papers. These papers have been identified in the most satisfactory manner, except article twenty-four, and it is your duty to take them into your consideration.

Gentlemen, I shall now entreat your particular attention to the evidence arising out of these minutes of their proceedings, which put, I think, the seditious nature of them beyond all doubt; and I shall confine myself to that particular motion which was made by Mr. Callender; I beg his pardon, I mean citizen Callender, for so the motion stands, which I shall quote from the minutes; and I shall beg leave to take some little time in commenting upon them; and I trust I shall not unnecessarily trespass upon your patience, if I follow the minutes from the first appearance of this motion, respecting the Convention Bill, till by the sudden and unexpected arrival of the magistracy on the 5th of December, an end was put to all the proceedings upon the subject.

Gentlemen, upon the sixth day's sitting (I read exactly the words of the motion), being the 25th of November, and citizen Urquhart being in the chair, citizen Callender moved, "That in case the minister should bring into the Commons House a motion for a convention bill, such as was passed in Ireland, it should be noticed immediately to the delegates."—By the form of their proceedings it should seem,—for those gentlemen conducted themselves with amazing regularity,—that this motion was not taken up at the same sitting that it was made, and we see no more of it till the 27th, when we have the following account of what passed upon the subject, Mr. Mealmaker in the chair.

"Mr. Callender's motion being then taken into consideration, amendments were proposed by citizens Downie, Sinclair, Bremner, and John Gartley" (he I understand is the town drummer of Paisley); "Mr. Margarot moved for adopting the spirit of Mr. Callender's motion, but thought it would be more advantageous to postpone adopting it, till the conclusion of the convention." "After some conversation it was agreed upon the motion of Mr. Calder, that the vote of the house

be put 1st, on the spirit of Mr. Callender's motion; 2ndly, on the words of the motion; 3dly, on Mr. Margarot's motion to appoint a committee. The sense of the House being taken of the 1st, it carried unanimously to adopt the motion as to the spirit. On the 2nd, it carried by a great majority, not to adopt the motion as worded. And 3dly, it was resolved that said motion and all amendments be referred as above."

9th day's Sitting.—Next day, the 28th November.—Mealmaker again in the chair.

"The minutes bear, citizen Sinclair read the amendment on citizen Callender's motion, as agreed upon by the committee, and it was agreed upon the motion of citizen ———, that the house should resolve itself into a committee for its mature consideration. In the course of the conversation, citizen Browne gave a history of the Habeas Corpus act. After an excellent discussion of the question, pertinent remarks, and amendments, the convention was resumed, and the whole as amended, being read over, the members stood upon their feet, and solemnly and unanimously passed the resolution as follows."

Here gentlemen you would expect to find this resolution inserted. But in place of it we have a blank in the minutes of near two pages clearly left for and intended for its insertion, but for some reason or other, cautiously and prudently omitted. Hitherto the minutes are of the hand-writing of George Ross. Immediately after the blank thus left, they are of the hand-writing of Mr. Aitcheson. The latter admitted to-day on his oath, that he did not this evening come into the convention till late, and that he superseded Ross as secretary, who was previously acting as such. He admitted also that when he came in, he found the convention debating on a proposal of Sinclair's, that a resolution of one kind or other should be committed to the flames. That he joined in resisting this proposal, for the reasons he gave, and he concluded by attempting to persuade us that this resolution was, and could be none other, than the motion and resolution for the appointment of a secret committee proposed by Margarot, after Aitcheson entered the room, and fairly in his hand-writing entered in its proper place lower down, towards the end of this night's meeting. Whether Mr. Aitcheson was only mistaken, or whether he was wilfully disguising the truth, is of little consequence. But that he is so, is obvious from the minutes themselves, and indeed from the very nature of the thing. For immediately after the blank pages, which Ross, with so much reluctance and difficulty was at last forced to admit, was left by him for the purpose of receiving Callender's original, and Sinclair's amended motion and resolution—The minutes in Aitchison's hand-writing proceed as follows: "Citizen Gerrald in an energetic and animated address, expressed his happiness at the motion passed, and exposed the act of the Irish parliament, called a convention bill; and citizen Browne followed him in a manly speech, and proved the influence of the executive government over the parliament. Citizen Margarot read and proposed the following motion, viz. that a secret committee of three and the secretary be appointed to determine the place where such convention of emergency shall meet. That such place shall remain a secret with them, and with the secretary of this convention, and that each delegate shall, at the breaking up of this present session, be entrusted with a sealed letter, containing the name of the place of meeting. This letter shall be delivered unopened to his constituents, the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state, until the period shall arrive at which it shall be deemed necessary for the delegates to set off. This motion was seconded by citizen Moffat, and the same was passed unanimously. The following citizens were then nominated a secret committee: Margarot Clark, Browne, and the secretary."

Now, gentlemen, I hold it to be demonstrated by these minutes, that there were two motions and resolutions passed this evening. The one on Callender's motion and Sinclair's, before Aitcheson came in, and which was the resolution for the meeting of a convention of emergency, which Sinclair dreading its consequences, and after all his care to amend, felt to be dangerous and criminal, and insisted on having it immediately burnt: and the other resolution for the appointment of the secret committee moved by Margarot, and distinctly described as the machinery by which the antecedent seditious and treasonable resolutions was at the proper moment to be carried into execution. And although the words of that resolution (probably burnt by Sinclair) do not appear, yet can any man doubt of its treasonable purport. The minutes of the former evenings prove that if parliament in its wisdom, should think fit to pass a convention bill, or suspend the Habeas Corpus act, these men were then to move in direct resistance to such a measure; and solemnly resolve on and frame a treasonable system to carry that intent into execution. The negative evidence arising from the two blank pages, as explained by Ross and Aitcheson, goes deeply to every man's mind to prove that this was the nature of that resolution: and it is clear to demonstration that this blank, which precedes the speeches of Gerrald and Margarot, was left as Ross was forced to allow, for the subsequent insertion of this resolution on Sinclair's motion, and not as Aitcheson either erroneously or falsely swore, for the insertion of that founded on Margarot's motion for a secret committee, which appears further down in its proper place, and is fully and fairly inserted *ad longum*.

Gentlemen, I know not whether, in the heat of argument, I may make myself understood, but I am satisfied of this, that you must concur with me, not only that both the Roses, but Aitcheson did this evening conceal the truth, to give their conduct no worse an appellation. I think these minutes prove, by incontrovertible written evidence, that what they said is not the fact; that something did pass, for which this opening was left:—to wit, the appointment of a convention of emergency, which Margarot, by that subsequent motion of his, clearly and distinctly points out, had passed before: for, if you find any thing of it before in these minutes, my argument is good for nothing;—but circumstances do sometimes happen to come out in evidence which the most artful cannot foresee, and which the most wicked cannot guard against; and, I say, this speech of Margarot's is as decided and as fortunate a circumstance, to show that this blank is meant to be filled up with that motion for appointing this convention of emergency, as if you had seen the motion before you. Mr. Aitcheson tells you, that he came to the meeting at about half past 10, and was informed that there had been a motion respecting a secret committee, and that citizen Sinclair said it should be burnt; that Aitcheson exclaimed against it, and said, that their proceedings ought to be fair and open, and the motion was not burnt. But mark this also, that every part of the minutes, previous to the blank, is admitted to be in the hand-writing of Ross; every thing after the blank, is admitted to be in the hand-writing of Aitcheson;—it is therefore perfectly clear from Aitcheson's account, that this secret resolution which he swears was come to by the convention, before he entered the room, and which they told him he was too late in giving his vote against, could not be that secret committee which was moved for after he came into the room, but must have been the motion of citizen Callender, which citizen Sinclair wished to be kept secret, and was afraid should see the light.

I hope and trust you follow me in the argument, because I think what I am now stating is indisputable evidence, that this motion for a convention of emergency was what was meant to be put into this blank. It was Sinclair's motion, to which Margarot afterwards alludes, previous to the appointment of the secret committee, which appears in the minutes, in the hand-writing of Aitcheson, but leaving the previous blank for the insertion of Sinclair's motion. But if you will now attend to the copies of the Gazetteer proved and authenticated in the course of this day's trial, this matter seems to be put out of all doubt. That this most notorious newspaper was the gazette of this convention, and contained so far as it goes, an accurate and faithful account of its proceedings, is ascertained beyond dispute. We have, in the first place, the authority of the paper itself, and of Scott, its publisher, who in the paper of the 20th November, the first published after the meeting, asserts, "that it contains an accurate account of the proceedings of the British convention down to Monday." We have likewise the evidence of the two brothers—George and William Rose, the assistant secretaries, who this day were obliged to admit, though with extreme reluctance and difficulty, that the Gazetteer contained at least the substance of their proceedings. One of these two is also a short-hand writer, and was chosen assistant secretary for the express purpose of being thereby enabled to publish their proceedings in this newspaper. I think therefore, gentlemen, I may be allowed to assume that the Gazetteer, though it may not state every thing done in the convention, at least, that so far as it goes, it does, as the publisher, citizen Scott, admits, contain an accurate account. Now let us examine more particularly the account in this convention gazette; and see whether it does not, by irrefragable evidence, confirm all I have now submitted to your judgment.

The Gazetteer of the 3d December, which by-the-by introduces the notice of Callender's motion, by minuting the "*Report of the Gazetteer Committee*," states that on the Tuesday evening, a long debate ensued thereon, which continued the whole evening. To the import of that debate, and to the violent harangue of Mr. Margarot, you, gentlemen, will, probably, bestow some attention. This panel was present, and to all these things adhered. He protested not at least either against the sentiments or language adopted on this occasion. But I desire not to load him with the guilt of Margarot: Skirving has enough of his own to answer for.

On the Wednesday — Mealmaker in the chair — *another warm debate* is recommenced on the words not the propriety of citizen Callender's motion: and is terminated by the appointment of a committee to amend the words. This report of Wednesday's proceedings concludes with a recommendation to all the members and their constituents to support the Gazetteer by subscriptions and every encouragement in their power.

On the Thursday—Taylor in the chair—this committee makes its report; and after stating that citizen Sinclair called the particular attention of the convention to this matter, the Gazetteer proceeds as follows: "The house resolved itself into a general committee to consider the report, which underwent a long discussion, and received several amendments in the committee; and when the convention was resumed, it passed unanimously in the form of a declaration and resolution. *But being ordered to stand the last article on the record of the proceedings of the convention, we cannot insert it till the termination of the present session.*" Then follows a long account of two most inflammatory

harangues from Gerrald and Browne, with which, for the present, we have little to do: but the result is, as stated in the Gazetteer, "That a secret committee was appointed to fix a place for the meeting of the convention, *under the circumstances mentioned in the preceding resolution.*"

I do therefore contend, gentlemen, that the committee of emergency, moved for by Callender, amended by Sinclair, and passed with so much solemnity in this illegal convention, for which a blank of a page is left in these minutes on your table, is one entirely different from the subsequent committee moved by Margarot as a secret one, and explanatory of and relative to the former. This last was only a consequence of the former antecedent resolution, — that resolution which they thought it dangerous to insert in these minutes; and which their accredited gazette, the Gazetteer, pretended was only postponed to the close of the convention, a period which you know, the magistrates did not allow to happen.

This resolution, therefore, was the one which Sinclair, justly alarmed, was proposing to have committed to the flames when Aitcheson entered the room, and assumed the pen at the table: and that he is correct in so marking, by his evidence, the period of his entrance, is proved by inspection of the minutes, which being previously of George Ross's, are during the remainder of the evening, the hand-writing of Aitcheson, and in whose hand-writing we afterwards find the resolution for a secret committee on the motion of Margarot, and the seditious and inflammatory harangue of Mr. Gerrald. With that gentleman's speech, I shall not now trouble you. He would have stood in the place now occupied by the panel, the day after to-morrow, if he had not, on his own urgent request, been indulged with a delay; but he shall one day or other stand his trial in this court, before he and I have done with each other, I shall assure him. But what I have now particularly to advert to is this, that these two resolutions are things perfectly distinct and separate: that the motion for, and adoption of a secret committee, is not as Aitcheson to day would in his evidence have us to believe, the result of Callender and Sinclair's original and amended motions; and that a seditious, if not treasonable purpose was in view of all those who either framed or amended, or concurred therein, is indisputably proved, not only by what they wrote and published, but by what they cautiously abstained from either writing or publishing; and that as to the criminal nature and purpose, they stand by their own conduct virtually condemned.

Gentlemen, let me look back again to the minutes; I am sorry to trespass so much upon your time, but I feel it a duty incumbent upon me, and I confess I feel some kind of anxiety in a cause of this nature, however clear the evidence may be, for the sake of my country, or for my own satisfaction at least, to leave no argument unstated which may be necessary for your subsequent deliberation. Mr. Margarot moved for a secret committee; and that each delegate shall be entrusted with a sealed letter, containing the name of the place of meeting; and the following citizens were named as a committee. There are only four members; and yet those persons Aitcheson, who wrote the minute, and Ross, and his brother, the assistant secretaries, who gave it as an article of news to the public, could not remember the names of those four persons, though such distinguished characters as those gentlemen are; Messrs. Margarot, Skirving, and Browne, three of the members who constituted this secret committee, are now at that bar.

Now, gentlemen, at the end of this day's meeting, it is moved by John Clarke and Matthew C. Browne, "that a committee of observation be appointed in London, to give the earliest information of that kind, mentioned in the foregoing resolutions." Clarke moves the very same evening, "to establish a committee of observation." This, in common form, lies over till the next day. The next day, the 29th November, in the first year of the British convention, anno domini, (which I wonder they did not discard) 1793, tenth day's sitting—the secretary read the previous motion of Clarke for a committee of observation, to be appointed in London.—Citizen Margarot said, "there was no occasion for a committee of that sort, as there were some thousands of persons in that city upon the look out." "It was accordingly agreed that this convention should request the London committee of correspondence to give the earliest intelligence of what passes in parliament." As they advance in their progress, gentlemen, the ringleaders become more audacious. Their conspiracy takes a wider range, and assumes a more formidable shape. Of this it would seem they were themselves sensible: for on the evening before the convention was broke up by the civil power, it appears that Mr. Margarot had either heard or suspected that they were now come to the very utmost point of their guilt; and that the sword of justice was just ready to descend upon them; the very evening before the other motions lying before them were dismissed, Margarot got leave to bring in a motion to the effect, "that the moment of any illegal dispersion of the British convention should be considered as a summons to the delegates to repair to the place of meeting appointed for the convention of emergency by the secret committee, and that the secret committee be instructed to proceed, without delay, to fix the place of meeting." The convention having considered the motion fully, unanimously resolved the same, and appointed the secret committee to proceed as desired. Early the next morning the ringleaders of this party

were apprehended before day-light, in their beds; and all their papers seized.

Now, gentlemen, permit me only to remind you of the evidence of Aitcheson and the two Rosses, however ignorant they were, you recollect they were extremely reluctant to speak out upon the subject of this convention; both of them concurred in telling you at once, I believe the last did not remember any thing at all about the matter, but the two former, Aitcheson, and William Ross did tell you, that in case of the parliament moving for a convention bill, similar to that of Ireland, that that was one of the cases under which this convention of emergency was to take place. They admitted that fact completely, which they thought was very innocent; but I beg leave to state, that it is the very reverse; and if I had nothing more to argue upon, in support of my proposition, that the proceedings of this convention were seditious and illegal, I would ask nothing more than they themselves have admitted to have been the purport of citizen Callender's motion; and this case of emergency, as they themselves state it.

Gentlemen, is it possible that you can permit any individual, or set of individuals, for any reason whatever, true or false, real or pretended, to set themselves up in opposition to the legislature, to take measures for thwarting them in their deliberations for the public good, to appoint secret committees, to call together delegates for thousands of persons, as they tell us they are, to fix upon a place to rally; and, if government do proceed to act as the Irish parliament have done before them, that that shall be a signal to rally to a given point—and for what purpose? the purpose is not spoke out, but it is your duty and your business to consider, that if a quiet and peaceable petition to parliament is, as we all admit, a reasonable and a proper step, yet if you confound with that right to petition, a secret appointment of this nature, the moment that such a bill is brought in, to convocate and call together in one given point, the delegates from numbers of persons all over the country—show me sedition:—tell me what it is:—is it possible for you to conceive any thing more directly falling under the name of sedition, than this resolution of Sinclair's, a step actually taken by them, to carry that seditious intent against the parliament into execution? they appointed a secret committee, whether they appointed a place of meeting or no, I do not care, for I take the meeting in the cockpit to be something like it; here then is a seditious intent acted upon, as far as the magistrates suffered them to act upon it. Gentlemen, I believe you see here, before you, one half of the British convention of the delegates of the people,—the worthy representatives of eight millions of people, and four persons, two of them now at your bar. Are those men fit to be trusted with the power of petitioning parliament peaceably and quietly? or did it require that these people should appoint a secret committee to watch the motions of parliament? or was it necessary for a peaceable appeal to parliament, on this, or any other question, that a convention of emergency should take place? I say it was nothing but an attempt,—if it was possible that the good sense of the country should be so misled,—to take the first step in that system of anarchy and disorder which they wish for, and which has taken place in a neighbouring country.

That a petition to the legislature was in truth no part of their purpose, is evident on the face of the minutes, and on the admission of the members themselves, no part of their plan. At the meeting of the 30th Nov. "A motion for drawing out a petition to parliament being read, the order of the day was moved upon it." On the 2d Dec. "It being moved that citizen Smith's motion for petitioning parliament, be discussed immediately, it was agreed that citizen Smith should withdraw it, and present another," and on the evening before their dispersion, citizens James Smith and Peter Wood moved, that "this convention take under consideration, whether after the contemptible manner in which the late petitions for parliamentary reform were treated, they should again petition for reform, or at what period they should recommend the same to their constituents."

Gentlemen, the conclusions will be unquestionably for you to draw; you are to judge of men, not by their professions, but by their conduct; and if you can reconcile their conduct in any respect to quiet, to legal, to constitutional proceedings, I will give up the point. Gentlemen, I might have rested upon this case of emergency, but I say it does not rest there, the legal dispersion of the meeting is proved to have been an additional case moved and carried in the convention, upon the evening of the 4th, when they were apprehensive of being laid hold of. And will you permit this man, or any set of men whatever, in the face of your magistrates, who are obstructed in the execution of their duty, will you permit them to make, what they call an illegal dispersion of their meetings, also a signal of this rallying of the convention of emergency, in which Mr. Gerrald rejoices and exults, and which Sinclair tells them, is to be supported by their united efforts.

Gentlemen, last of all comes what depends upon the evidence of the first Ross, and upon the evidence of Aitcheson, that one case of emergency was, that of a foreign invasion. Ross called it a French invasion. I think the other man called it a foreign invasion, and young Ross said it was in case of Hessians and Hanoverians being brought over, but not a word of the French. Gentlemen, you will judge of this convention with all its French terms, whether young Ross is to be believed, or Aitcheson and his brother are to be believed; you will consider whether the emergency

of a suspension of the Habeas Corpus act, or of a motion in parliament for a convention bill, similar to that of the Irish one, does or does not prove it to be a meeting for seditious purposes; you will consider what purposes such a meeting, if they were peaceably inclined, could serve, or whether such a delegation, from thousands of persons, was not calculated for some other purpose. It remains unascertained, and unexpressed, because it durst not be expressed, whether this convention of emergency was for the resisting a French invasion, or supporting it; you will consider, holding the balance of evidence strictly between the panel and the crown; viewing the conduct of these gentlemen, upon observing Skirving glorying in a paper which accuses the parliament and the whole body of this country of injustice; going to war with a nation merely because they will be free; looking to citizen president, and citizen this, and citizen that,—to the divisions into sections, to the *vive la convention*, which appears to one report, and *ça ira* at the bottom of it, admitting persons to the honours of the sitting; whether these men were, on these events and emergencies, to meet together, in places and under circumstances shrouded in secrecy and obscurity, to follow a peaceable and quiet, or a tumultuous and rebellious conduct. I call upon you, as honest men, to say if you think these men were met together to resist an invasion, if such a thing should happen, or to support. But if, as my opinion is, their purpose was to assemble a convention of delegates, representing as they say, thousands of people, then the conclusion is inevitable, that the purpose for which this convention met was, to join those persons whom we know within these few months have dared to hold out, in their own country, that they would land an army in this, and establish what they pleased in it;—would punish London, the proud metropolis of Britain, for its interference and defending itself as it has done,—you will be of opinion with me that they meant to lift the hand of rebellion against their sovereign, the constitution of their country, and the liberty of their fellow-citizens.

Gentlemen, before I sit down, I hope I shall not be accused of unnecessarily trespassing upon your time, when I profess the authority from which I draw it, the reading, as part of my speech, that of an able and intelligent man, pronounced very lately upon this very subject, I mean the Irish convention bill, and I think I cannot be imputed a plagiarist if I take the words of the solicitor-general of Ireland.* When the convention bill was moved for last summer in Ireland, it received all the censure, it was made the handle of every topic of abuse, and of an attempt to inflame the minds of the Irish against it, by persons in that country, of a similar description to those here; it received an ample discussion in parliament; and, to the honour of opposition in Ireland, who have in a great measure followed the honourable and patriotic conduct of the opposition here, though Mr. Grattan, the chief of their leaders, was for limiting it to a certain time, it was universally admitted to be a measure of absolute necessity, and which, in some effectual way or other, though they differed in the mode, they were bound to support. Gentlemen, give me leave to read part of his speech upon that subject, because it is immediately upon the point before us; and farther because it is more eloquent, better composed and more argumentative than any thing I could say upon the subject.

[His lordship here read an extract from the solicitor general's speech in the Irish parliament.]

I ask yourselves if that gentleman stood in this place, addressing you, instead of the Irish parliament, if the circumstances would not precisely justify an adoption of the same language. We have a parliament assuming to itself the name, not of England alone, but of England and Scotland, upon the French model, partaking in all its proceedings of the distinguishing marks of the proceedings of France; and I appeal to a speech of Mr. Browne's particularly, as Mr. Margarot boasted that thousands in London were upon the look-out, so he encouraged this meeting in Blackfriar's-wynd, telling them that at Norwich, and Sheffield, and every where else in England, there were many thousands, of whom he was the worthy representative who had delegated him to this meeting. Gentlemen, there were also contributions levied upon the poor and the ignorant, the deluded and infatuated, many of these persons were brought here to day before you. You saw their appearance and their situation in life. Aitcheson indeed is in the employ of some gentleman or other, but look at the list of those persons, and you will consider what Skirving has to answer for, or what others of a higher description have to answer for, who, with the aid of superior talents and discernment, have knowingly propagated the contagion among such persons, by discourses and by proceedings of that kind which are laid in this indictment.

Gentlemen, I think I have now gone through the greater part of what it appears to me to be necessary to state. In the division of the sections; the honour of the sitting; a compulsory attendance; in short, in every point they form themselves after the model of the convention of France. And they pass to the order of the day; when one person, a gentleman whom I shall not name, because he must soon be responsible at your bar for his conduct, appears and attacks the verdict of an English jury, and the sentence of the lord chief justice of England, he is admitted,

* Mr. Toler; afterwards lord chief justice of the Common Pleas in Ireland, and lord Norbury.

on that account, to the honour of the sitting. I say this upon the authority of the minutes. And in one particular motion, I think made by the secretary, a regulation is made that no stranger shall be admitted to the honours of the sitting, unless recommended by two members, and a variety of other circumstances, which it will be unnecessary for me to state; but I pledge myself, without fear of being contradicted, that every single word that I have now stated stands upon these minutes. Here is a motion made by citizen Ross with *vive la convention* at the top, and *ça ira* at the bottom of it; here you have a body of circumstances together, perhaps each of them *separatim*, insufficient to found any serious charge, but all taken together, directly pointing to show that it was a meeting of a seditious tendency; besides that, you have a motion made by Mr. Margarot and Mr. Callender, copied, I believe, exactly from one of the resolutions of the French convention. Then comes Mr. Downie's motion, and in one word, to bring the whole distinctly to the panel, that, as he was the secretary, so he is the chief tool and instrument in bringing them together; it is proved in the most complete and satisfactory manner; first by the motion of Downie, which describes him completely in that character, and on that account alone, as being the chief spring and the very soul of all their proceedings, he seems to be indulged with the power of speaking oftener than once. You have also two letters produced which call upon those delegates, in the most inflammatory manner, who had gone away previous to this, to return to their duty at this awful period, and come to their posts? You have also what is still more material, and proves distinctly that this Skirving is the person who formed the idea of this delegation, and of this meeting;—that he is the person to whom this country is indebted for that wonderful advantage which they have derived from the presence of Messrs. Margarot, Gerrald, Browne, Callender, and Sinclair. Here are two letters found in the repositories of Skirving, one of the 5th October, 1793, dated London, addressed Mr. William Skirving, head of the Horsewynd, Edinburgh, signed Thomas Hardy,* two days before the meeting of the general committee; containing an observation which goes to attack the conduct of the jury, and of the supreme court of judicature of this country.

"Draft of a LETTER from the Secretary of the London Corresponding Society, to Mr. Skirving.

"*London, 5th October*, 1793.

"Dear sir;—With pleasure I peruse your favour of the 2nd instant; but as yet have seen nor heard nothing of the two copies of Mr. Muir's trial, which you mention as being sent to the society, and to myself. Be kind enough, notwithstanding to return that gentleman thanks for his polite attention; and assure him, that we view him in the light of a martyr to freedom, as well as Mr. Palmer; and that our warmest hopes are, that the oppressors of mankind, will either be ashamed or afraid of carrying their revengeful malice into execution.

"The general convention which you mention appears to Mr. Margarot (to whom alone I have communicated your letter) and myself, to be a very excellent measure, and as such I could wish you, without delay, to communicate it officially to our society, without any ways mentioning that you had written to me privately. If in your official letter you should require us to send a deputation to that meeting, I have no doubt but our society would with pleasure accept the invitation, and I am persuaded it may do much good. Our freedom, as you justly observe, depends entirely upon ourselves, and upon our availing ourselves of this opportunity, which once lost, may not be so soon recovered.—I am glad to discover by your testimony, that I was by no ways mistaken in the high opinion I always had of lord Daer's patriotism. A title may be a bar to disinterested patriotism; but, it seems, he has evinced it to be an insuperable one.

"You are right—it is true that we have had another general meeting, at which a hastily composed and suddenly produced address to the king was read, applauded, and agreed to be presented, but on a cool revisal, the said address being found to be more ill-natured than spirited, more dangerous in its language than advantageous in its object, besides being too long, the committee, with the approbation of the majority of the society, have adopted another, much safer, more apposite, and relating solely to the war. Enclosed you have a copy of it. But you was misinformed when you was told we passed any resolutions at that meeting, for we only came to one, and that rather of a private nature, namely, 'that the conduct of sir James 'Sanderson, in preventing the meeting of the 'London Corresponding Society at the Globe 'Tavern, Fleet-street, was of such a nature 'as to place him below our censure.'—I am, most sincerely, your fellow labourer and well wisher. THOMAS HARDY.

"P. S. Mr. Margarot desires to be remembered to you in the most affectionate manner. Do not in future, on the address of your letter, mention any thing of the (London Corresponding Society), for it was a thousand to one that I received that letter by post.—To Mr. Skirving, Edinburgh."

Gentlemen, this proves that upon the 2d of October, Mr. Skirving had wrote to Mr. Hardy, the secretary of the London corresponding society, stating, that which Hardy says is an excellent measure, that he had

* See his trial for high treason A. D. 1794, *infrà*.

suggested the plan of a general convention, and it contains an observation which, I hope, will be made by these gentlemen upon the chief magistrate of the city of Edinburgh, who has just followed the conduct which sir James Sanderson followed, and for which that magistrate has received the thanks of, I believe, nine-tenths of the city of London. Upon the 24th of October, Hardy writes again thus:

[Reads it.]

Gentlemen, I have now gone through the whole of the evidence. It remains for me only in a very few words to consider the conduct of this man and his associates, after the seizure of their persons and papers, on the 5th of last month, and the repeated and at last successful exertions of the magistrates to disperse the convention itself. For our conduct on this occasion, to my surprise, have we been blamed.—It was asked in the course of this day by the panel, why, if I considered the convention as so seditious a meeting, did I allow it to sit so long? My answer is, we did not choose to interfere, while there was the least doubt, as to the legality of their proceedings, or as to the evidence which could, or might be recovered of their guilt. But when the three numbers of the Gazetteer now on the table made their appearance, and other information came to my knowledge, which led to the belief that their minutes contained criminal, nay, treasonable matter on the face of them, my learned friend and I did then, after fully and well considering what we were doing, advise the lord provost and sheriff of the county to do their duty, and which they promptly, and wisely, and effectually performed.—The result of our caution has been to possess us of, and to lay before you, what appears to me, and which I have endeavoured to satisfy you, is as complete and convincing a body of evidence, as ever was exhibited in a court of justice.—You have the evidence to-night of the lord provost, the sheriff, and Laing and Scott, the two clerks: and without particularly commenting on the notes of what they said, I need only refer you to your own, and then ask, whether it is possible for you to doubt, that as the seditious conduct of this man before the morning of the 5th of December is already apparent, his behaviour during the whole days of the week immediately subsequent, proves an obstinacy in his criminal purposes, and an inveteracy in his rebellious intentions almost incredible. When they were forced to retire from Blackfriars-wynd, upon the evening of the 5th, they called out that they were to adjourn; they adjourned to another place, and it is proved by the Gazetteer, that that evening the convention declared themselves permanent; the event of an illegal dispersion, was one of those events which was a signal for the convention of emergency to take place, the meeting place of which the committee were to keep secret from all the world, that it might not be known; that a fire might be kindled in a place where the eye of the executive power could not see it, and might rise to such a height, that it would have been perhaps impossible to have extinguished it. Gentlemen, you find them the next evening, though out upon bail, again acting within the bounds of the city of Edinburgh. Here they yielded to the authority of the chief magistrate, but had they done what was oppressive, had they presumed to have dispersed a constitutional, peaceable meeting, they might have obtained redress. You find them again assembled the next evening, and Skirving particularly, under a thin pretext which you will not receive, that the cock-pit was his own private house: they were to meet agreeable to advertisement, upon the 10th of December; the British convention being now constrained to adjourn to the place appointed for the convention of emergency, the general committee of the Friends of the People, were requested to meet at the house of Skirving, at the cock-pit, at twelve o'clock at noon. Can you consider this meeting at that place, founded upon the restraint which they had met with, and this advertisement being signed by this very gentleman as secretary to them, —can you consider it as any thing but a flimsy pretence to shelter themselves under the wing of the law? Mr. Skirving was there, and Mr. Browne, persons who were the ringleaders, and active, not only upon Thursday the 5th, but upon the evening of Friday the 6th; and when called upon before the magistrates upon the Wednesday, to answer for this insolent advertisement, he pretends a wish to obey the law; he gets a copy of the prohibition of the magistrate; and, to conclude what I have to say with regard to him, what is his conduct? You find him reading a paper which, my learned brother who spoke early in the day—anticipated every thing I could say upon the subject,—is as insidious, as seditious, and as inflammatory a paper as, under such circumstances, could possibly have been composed; he writes it in the morning before he goes to the place of meeting: and, he says, "The magistrates of the city, having forbid your legal and constitutional meeting, called this day by advertisement, and by their proceedings to prevent it, having given occasion to a great concourse of people, which may issue in tumult, and hinder your deliberations, it is judged proper to adjourn the meeting." It was false when he wrote this paper, that any assemblage of people had taken place; whether it was likely to be so or not, he could not know the fact which did not exist; but this he coolly and composedly puts upon paper before he goes, and shows what was the object he sincerely wished should happen, that there might be a concourse of people and a tumult, that he might retire with precipitation from it, and leave, perhaps, a misguided and deluded mob to

suffer for their folly, if a tumult did exist; or if there was any chance, that upon this occasion any riot was to take place, the tumult would be of a different nature, and a dangerous stop indeed, which would have directed its force, if it had not been checked by the arm of the magistrates, upon the heads of those who were the real objects of it. He says, "It is therefore proposed to you, to give place to the violence used against you: You will thereby convince the public, that you did not deserve such treatment; and now that your delegates have a permanent existence,"—they had voted themselves permanent the week before, when it was carried, that they were to assemble under another name at the cock-pit; this proves that the object was the same, that they were in a state of permanence which the Friends of the People had not come to, but which the British convention undoubtedly had; and now that they "have a permanent existence, your several societies will be multiplied greatly, and means will be used to lay the business before each society individually, by printed bulletins." Still the same French expressions, from the moment that he appears upon the stage, till his last appearance which he makes upon it; and with which appearance I take my leave of him.

Before you, gentlemen, the only legal representatives of your country; and to whom, as such, your country look up, and who, I know, will support your proceedings; before you, have I laid the conduct of this man, and from your hands I demand justice against him. I cannot conclude without reminding you, of what it is perhaps indecent in me to suppose, that you can be intimidated, or that you can be overawed, or that you can be dissuaded from exercising that duty which you owe to yourselves and to your country, and following the dictates of your conscience, by the calumnious, false, and unjust aspersions of any man, or set of men. I know, and I trust, these will be treated by you with the same contempt, with which I have treated all those attempts, which have been made upon me; with that contempt with which I shall treat all that calumny to which I have been lately exposed, with that contempt with which I have treated even those anonymous threats of assassination, which I have received in the course of these two or three months, because I have dared to be vigilant and faithful in the execution of my duty; from that line of conduct, I shall not be induced to swerve or recede.—The office I now hold is a high and important one, and my country has a right to look for, and expect from me a steady, and firm, and I trust, just and temperate discharge of its duties, in which their peace and tranquillity and good government, are deeply concerned. Such is the line I have determined to follow at all hazards, and in every event. I did hope that the example of two recent prosecutions might have had their effect, but which the conduct of this man proves have been completely lost upon him. I shall however continue to discharge that duty; and every man who presumes to follow the conduct of these persons, not only those who are at present under charge, but those who may not take example from what, I trust, will be the result of the proceedings of this night, they may depend upon it, that the arm of the criminal executive justice of this country, shall be directed to bring them to punishment. I shall bring them into this court, to this bar, before a jury of Scotchmen, and in their hands I shall leave them; and I know they will do justice. And, I trust, we shall all, as Jurymen, as Prosecutors, and as Judges, meet with the applause, and with the support of every worthy, every good, and every virtuous citizen; and the abuse or threats of those of a different description I shall account my highest honour, and consider as my best reward.

Mr. *Skirving*.—Gentlemen of the jury;—it gives me pain to think of detaining you, by going over the whole that I stated on the relevancy; but as you were not then in judgment, I think it my duty to state again generally what I then said, and to which I now call your judicial attention.

[Here Mr. Skirving proceeded to run over the substance of his pleading, before the lords of justiciary, and having stated to the jury, that it was impossible for a person, not accustomed to speak in public, to follow out the lord advocate in so long and elaborate a speech, in which, however, he observed there was, he might say, nothing to criminate him personally, the most of it being occupied in vilifying the convention, and in fitting up a blank leaf of some notes, said to be of the proceeding of the convention, and taken down by a number of persons; he went on to his defence, and took the liberty to read and speak alternately as follows:]

Though what I have stated already, in pleading against the relevancy of the libel, must have convinced you of the injustice of charging any thing concerning that paper against me, after what had already taken place relative to it; yet, as the writing has been condemned by a jury, and the prosecutor seems still to lay much stress, in his endeavours to criminate me, upon my having received some copies of it, and upon my giving some of them away to a very few people; I must call your attention to the amount of the evidence produced on this point: although it must strike every person, on the first reflection, that if I had thought that writing calculated to any purpose which I had in view, instead of giving away the very few charged on me, I might have had them sent to all places where there were societies of the Friends of the People.

There appears no concert, on my part, in this business, nor previous knowledge of the nature of the writing, nor commendation of

it. No evidence, of my ever approving it; and, so far from showing an anxiety to distribute it, I had taken no means to spread it at all, nor ever considered it as a writing, that could give offence, or in the smallest degree endanger the peace of the country. There is not a single thing more come out in trial, than what I acknowledged before the sheriff, and from which I was assoilzied by him. The fiscal, who on no principle could be a witness in this cause, did indeed swear that I was only dismissed to bring up the letter which I had acknowledged. But you see the sheriff himself, with candour acknowledges, and you see the fiscal himself declaring the truth by his conduct at that time, though the prejudice of his heart has operated a different idea in his mind since that event. At that time he believed his first petition to be judged and rejected, for he first gave me a new summons, without a petition, and then presented a new petition by the lord advocate's orders, to have my papers searched, and myself incarcerated though, no new crime, nor additional circumstance to the former, was so much as alleged in it. "The above petition having been read in court, the lord advocate, as the petitioner has been informed, objected to it, and said that the proceedings against the prisoner had been all taken in consequence of directions given by him."

The jury who condemned the Dundee address, informed of the alarming society of the Friends of the People, by the false and insidious calumnies of vile and venal newspapers, and magnifying the hideous picture, according to their distance, might naturally enough suppose, that, putting such a paper into the hand of such men, was giving arms to the enemy, or a dagger to madmen; but it could never enter my thoughts, that such a paper would ever excite the Friends of the People to riot, or tumult. I knew them too well to apprehend the smallest danger from their reading of it; the facts set forth in the paper were already known to them. And if this paper fell into the hands of others, it could only have excited them to join the Friends of the People, which to do, is synonimous to a declaration, to avoid all riot and tumult; and, instead thereof, would have been subjecting themselves to good order, and to wholesome regulations.

The public prosecutor must have been very ignorant of me, if he thought my reading was so contracted, as that I should be startled at such a paper. I have read many, much more strongly expressed; and even the worst of them did not come up to my idea of sedition, which is leasing making; and, let me observe, that seeing this quality was admitted as essential to make up the crime of sedition, at the time of making these statutes, and these were the times of arbitrary government in this country, could I ever suppose, that at the end of the eighteenth century, telling the truth would be found sedition. And, if the authors, who have wrote the same things, have not told us the truth, in the passages which I will now read to you, from whom are we to get the truth? And whom are we to believe?

I have already read some passages, and will afterwards read some more.

If then, I, who knew these things, could not believe the Dundee paper to be false and calumnious. How then can I be chargeable with sedition, for only receiving it, and letting a few friends, who were all on the most intimate footing with me, get copies of it, when desired. Besides, it is to be observed, that, as they were sent to a society whose secretary I was at that time, I might have given them all without fault, though it had been a criminal paper, because I might have given them without looking at them, so as to judge of their merit.

It is not proved, though asserted in the libel, that I gave a single copy to any, but to those to whom it was sent, and only to them, when they called for it.

No more is proven. And can doing this admit the suspicion of seditious and felonious intention? Surely no person hearing me can believe it. I ask you again, has the public prosecutor proven a single thing more than what I acknowledged before the sheriff, except giving one copy to Mr. Kid, and one to Mr. Aitcheson, of both which, however, the sheriff likewise knew, and yet judicially assoilzied me?

The prosecutor is not more successful in his proof, relative to the second hand-bill charged in the indictment. He has neither proved that I wrote it, nor that I signed it, nor approved of it, nor published it, nor even that it is the address by the society, to which I am secretary; nor, that I was secretary to that society in particular. Nevertheless, as he will not give up his charge against me in this particular; and, as some may suppose, that I must have been concerned in it; and yet, I trust, that none of my judges will proceed in judging me upon any thing, except what is fairly charged upon me in the indictment, and also fully proved; I will beg leave to put that natural interpretation on the address, which unprejudiced investigation must be inclined to put. Supposing that a society of the Friends of the People,—for I can only suppose it, as the prosecutor has by no means proved it,—had drawn up this address to the public, yet some of the witnesses said, that the meeting referred to, refused to pass these resolutions. As all of them were very sincere, and conscientious, and of course zealous in the cause of reform, as being that alone which, in their humble estimation, can save the country; can it be supposed by any thinking man, that on such a subject, they could possibly express themselves more softly? They believe sincerely that they have been, as by peacemeal, deprived of all the rights which, they have been instructed, their fathers

had purchased by their blood—as was offered to be proved in the House of Commons, by Mr. Wharton, as you have seen by his motion made there, and not contradicted, and which I have already read to you. In what other terms can you suppose that they, as free born Britons, would apply to those who kept them up, than in the language of demand, and of restitution? If they have not been robbed of their rights, they are made to believe so by those who should know best,—the members of that very house, which it is said, have sold them. Fully persuaded, and high in the idea, that they had at length fallen on the only plan by which they could recover their lost rights;—and in which they thought their fellow citizens were blind in opposing them, because their opposition to the measures, which they judged effectual, hurried the ministry into a destructive war, which, they dreaded would end, as is now evident, in anarchy and ruin;—in what more moderate terms then could they reproach them for their folly, in being the evident cause of reducing their country to so great calamity and danger?

After all,—for I must take every advantage of the prosecutor, because he has discovered an unjustifiable keenness to criminate me,—you will be immediately be convinced, that all he has said, and all the evidence he has brought, is quite foreign to the object before you. It cannot any way be applied to the address in the indictment. The hand-bill is described, in the indictment, to be a hand-bill, in consequence of which, a society, termed first, "The General Convention; and which did afterwards arrogate to itself, the name of 'The British Convention,'" did assemble. But all the witnesses have declared, that the hand-bill, on which they bore testimony, was that advertisement, whose object alone was to call the several meetings of the Friends of the People, in Edinburgh, to meet in their respective bodies. It called no meeting of any other description, as you will see by the parts of the bill which the lord advocate has industriously kept out of sight, and which parts omitted are as follows:

"Friends of the People, Mason Lodge, Blackfriars-wynd, 4th October, 1793.

"Conscious of the purity of their motives and the legality of all their proceedings, which have been solely confined to that great object of national justice, a parliamentary reform; the Friends of the People have heard, with mingled astonishment and contempt, the false and injurious aspersions bestowed upon them, in the course of Mr. Muir's trial.

"In their own vindication, and to show the world, that neither the imbecile ridicule of a crown lawyer, nor the unconstitutional opinions of a judge, can make them desert the great and important cause in which they are embarked; a numerous and respectable meeting of the Friends of the People, in and about Edinburgh, holden as above, have unanimously agreed to the following resolutions:

"I. That this society is determined to adhere to the original principles of its institution.—'An equal representation of the people, 'and a shorter duration of parliamentary dele-'gation.'

"II. That, without reflecting on a verdict of the country, the meeting consider it their duty, to return thanks, in this public manner, to Thomas Muir, younger, of Huntershill, for his manly and honourable exertions, in the cause of a parliamentary reform.

"III. That this meeting likewise consider it a duty to express their thanks to the rev. T. F. Palmer, for his exertions in the same important cause.

"IV. That this society calls upon the people of Scotland, to unite in promoting the happiness and prosperity of their country, by assisting to obtain a reform in the Commons House of Parliament, the only measure that can secure to them and to their posterity, the inestimable blessings of peace; check an increasing and oppressive system of taxation, and prevent the baneful influence of that corruption which has proved so inimical to public virtue, and so destructive to private morals."

Then comes the part of this hand bill narrated in the Indictment.

"Friends of the People.—The general committee call on you to meet in your respective societies, at the times and places directed below, for the purpose of admitting those who now incline to join your several societies, and thereafter to take the proper measures previous to the general convention, which will be then submitted to your consideration.

"Wednesday, Oct. 9th.—The Calton and Lawriston societies, will meet at their usual places, precisely at 8 o'clock.

"Thursday, Oct. 10.—The Cowgate society will meet at the same hour, in the Mason Lodge, foot of Blackfriars-wynd," &c. &c.

As I know of no other meeting, except those nominated in the said hand-bill itself, which did meet in consequence of the hand bill, the general meeting, as is stated in the indictment, "assembled in consequence of it," must have been one of Reeves's associations; and which might, with great propriety, be termed an illegal association, for all that is known to the panel, for he was never connected with any of them; and has no knowledge of any such illegal association.

But, it is actually proved, by the confession of the person who was the author of the indicted part of said hand-bill, and by the evidence of his own brother, that the parts of that publication complained of, namely, the first half of it, is not my composition, but his own, and can any person suspect me to be the composer of the remaining half of the bill, when they see that it contains an address of thanks to myself, if ever the same was at all ordered?

I have shown that there is nothing in the first part criminal; and what in the last part

is wrong? Who does not see, that after the French have conquered all Europe, they must also conquer Britain? And if this country associators were sincere, they are now certainly called upon to risk their lives and fortunes, that is to say, they are called to oppose this formidable enemy, who may take both life and fortune from all those who have pledged their lives and fortunes to oppose them, if they shall find them making good their promise, by still urging and aiding the very ruining attempt to subjugate that people.

The public prosecutor and some of the lords of justiciary have grievously twisted the *N. B.* at the end; which, however, if considered in the plain and obvious light in which it appears to every eye, not jaundiced with prejudice, cannot be construed to mean more than a peremptory call, to make good their share of the public obligations of the society in the present deficient state of their finances.

I have already said, that the general meeting, defined in the indictment, is not any meeting called by this hand-bill. That at any rate, I am no way connected with any such general meeting, as the one so charged with sedition, and said to have met in consequence of said hand-bill. The British convention, whose secretary I am, is that well known society and meeting, which was a prorogued meeting of the convention of the Friends of the People, that met on the 30th of April last, and adjourned till October ensuing; and then assembled in consequence of said adjournment, and of the following public advertisement; and not in consequence of any other advertisement whatever.

Friends of the People, and of Parliamentary Reform.

"The general convention, at the last meeting in May, unanimously resolved, to persevere in the cause of reform which they had espoused; and therefore adjourned to Tuesday the 29th of October next, when they would again assemble in the city of Edinburgh, in such a place as the Friends of the People there should provide for the meeting.

"The several societies are now therefore called on, to meet in their towns with all convenient speed, for the purpose of electing and instructing their delegates to the ensuing general meeting.

"Societies lately formed, and those who have not been yet affiliated with the general association, and such as may now be formed, in consequence of this intimation, will not fail to send with their delegates, an attested declaration of their adherence to the principles and the object of the association.

"Another application for redress of grievances,—the kind of reform sought, and for the not specifying of which, in the last petition to the House of Commons, it was rejected, —the mode of this application,—the vindication of the association against the public charges of sedition, and malignant design, &c. are subjects which will require the most deliberate discussion. The delegates will, therefore, come up to this meeting, as to the duration of the sitting.

"Meetings, and incorporations of every denomination, already established for necessary, or benovolent purposes, in whatever part of the kingdom, and who may not conveniently change their form, but who are well disposed to unite their efforts for a speedy reform, as being that which alone can put a period to the calamities of the nation, will be received as brethren in the persons of their delegates,—for the Friends of the People seek not their own reputation, but the universal good of all.

"The association, in Edinburgh, will advertise the place of meeting in due time.

"W. Skirving, sec."

This is the meeting which I acknowledge, and which I will defend if called on.

The minutes produced, may be the minutes of any other meeting. It is not proven that they are the minutes of the true British convention, with which I am concerned, and for which I will ever be ready to answer. Not one witness has declared that they are so; and I have never been called on to instruct how these papers came into my hand. They are evidently the notes and writings of many persons. It is not proven that any of them are my writing; and though this had been proved, it has been at the same time proved, that they could not be the minutes of the British convention; because the British convention appointed a committee to draw out their minutes, and it is not even hinted, that these are the minutes drawn up by this committee; and how can they possibly be the minutes of the convention which appointed them?

The British convention of delegates is a justifiable and justified association. It met under the sanction, and after the example, of the convention of delegates from the burghs, and of the convention of delegates from the counties of Scotland, and both of these countenanced by the first characters in the kingdom. It had the same legal authority for assembling as either of these. When a few of the pensioned, and to be pensioned, members of these in this county, wanted to call in question the propriety of their own conduct, with a view to put a stop to our pensionless associations of the people, they were pleased to report the following, and transmit the same to the other counties:—

"Report 11th. In addition to this report on the merits of the two bills, the committee submit, that they entertain great doubts of the propriety of sending delegates to the meeting appointed for the 30th of May next. In the present situation of this country, they wish not to give their sanction to general conventions for the purposes of reform; they do not see any good that can arise from it; for the business can be more fully and better investigated in each county, where freeholders

and commissioners of supply form a legally-constituted meeting; but they have no powers by law to send delegates to any convention. The only legally-delegated body is the House of Commons; and each county can give instructions to its representative, by which mode the general wish of the country may be obtained in a constitutional manner.

"JOHN INGLIS, *Preses.*"

This attempt of the committee of the county of Edinburgh, evidently intended to pave the way for a quietism bill, received the following answer from a number of the principal members of both these conventions:—

"Answer 11th. The opinion of a meeting thus constituted, will not, it is hoped, have much weight in the meetings of the 30th of April, or with the commissioners of supply, and the great body of heritors, entitled to attend these meetings, it was the declared intention of the last meeting of county delegates, 'to restore the right of representation 'to all men who stood deprived of it by the 'act passed immediately preceding the revo-'lution,' and by the different explanations given to it in the present century.

"It is curious that the committee of Edinburgh freeholders, most of whom were delegates, and voted for the re-election of delegates this year, should have made such a proficiency in the study of law, during the course of a month or two, as to discover the illegality of meetings of this kind, and that they should venture to state their opinion against that of the lord chief baron of the court of exchequer, who presided in the last meeting, and of the lord advocate, upon whose motion it was unanimously resolved, to recommend a new meeting of delegates this year, without either the dean of faculty, or any other of the eminent lawyers, or any of the country gentlemen, having once suggested a doubt concerning the legality or propriety of the measure.

"We entreat the committee of the county of Edinburgh to recollect, that every meeting is lawful upon the very principles established at the revolution, which they have so solemnly bound themselves to stand by.

"The futility of the argument, that each county may, without communication with others, instruct its members on the mode of amending a law, which is general over the whole country, must be apparent to every one. Were this attempted, we may be sure no amendment whatever would take place; for it is next to impossible that any two counties should, without communication, agree on the same mode of amendment. Hence it must appear, that the consequence of the committee of Edinburgh's resolution, is to allow those abuses to remain in the law, which (to use their own words) have rendered it impossible for courts of law to follow uniform and consistent decisions.

"ROBERT GRAHAM, *Preses.*"

It is evident then, that in being a member of the British convention of delegates from the societies throughout Britain, I am no more chargeable with guilt, than his lordship the prosecutor himself, or those other great names who patronized the burgh and county conventions; and the British convention is also equally justifiable, and must be held so, until legally condemned. One of the prosecutors, comparing this regular and well-known meeting, or society, to a mob collected for mischief, maintained, that any one of the number might be taken up and punished; but he by no means instructed, that either by the law, or the practice of this court, any man was ever punished for being present at a mob, if it was not also proved, that he had an active hand in effecting the mischief that was done by that mob.

If the British convention is to be esteemed by you a mob, you cannot find me guilty of any thing, but of those things only which the prosecutor has proven was my own individual act. If the prosecutor had charged me, as the secretary to the British convention, and therefore answerable in law for their proceedings, I should have met him boldly in that capacity, and challenged him to criminate any part of their conduct; I should have been prepared to answer every thing his ingenuity could have suggested against those deserving patriots. I should have justified them fully. In this case I would have stated candidly, the object and design of that body; their proceedings down to the time of the violent attack made on them; and submitted the whole to a fair and open trial. But to try me, individually, upon parts and portions of proceedings of a number of seditious people, as the indictment states them to be, and which were called in a very different manner from the British convention, which was summoned by an avowed advertisement of mine, put into the newspapers by their authority, as I have already stated, and which was of a very different nature from that one narrated in the indictment, is certainly the most extraordinary and unprecedented attack; and which, I am sure, the prosecutor could never have made, if he had not known, that every person and every thing would be at his beck, like his faithful minion, whose mistake has been shown before his face in the Court.

If the British convention, consisting of delegates from the various societies of the Friends of the People throughout Britain, is justified by the example set them by the whole nation, and which example I have shown you, was vindicated and justified by some of the first characters in the kingdom, and cannot be condemned; surely neither can you condemn the business for which these delegates were sent up, namely, to take the proper measures for a substantial parliamentary reform. Can any man have a doubt of the necessity, the immediate and absolute necessity, of such a reform? I will not suffer a doubt to remain about this necessity in the

breast of any one who hears me. I will read a few paragraphs from the publications of those who should know, who must know, that such necessity exists; and if we may not believe them, whom shall we believe? I will first read you, from the earl of Buchan's political essays, lately published, the opinion of men in the higher spheres of life.

"A rich and powerful nobility (alias, an oligarchy), must soon destroy the liberties of any people among whom they are suffered to domineer.

"It is in vain to search for the moral and national principles of government in the military Gothic age. In those wretched times, men had no civic union, no proper interchange of political sentiment. Fixed, or rather chained, as they were, to the soil of their masters, the people were without collision of sentiment; had no organized societies for the contemplation of common interests; no high roads, no posts, no printing presses! What is man in such a situation, but the machine of regal or princely ambition and luxury?"

"The struggles for liberty in Greece and Italy, recorded so eloquently by the Greek and Roman classics, imbued the minds of youth, and excited the feelings of the aged, with the ardour of political sentiment. The people then began to know truly what it is to be a member of a free commonwealth, to be a citizen. Delightful name! Best of inheritances, best of rights; not to be surrendered, but with the life that accompanies it! With these sublime and heart-engaging affections, the study of the Scriptures of Moses and the Evangelists in the living languages of Europe, and the consolation of free agency in the choice of religious opinions, remarkably contributed to the creation of new political energy among all ranks of men, but particularly among the middling and lower classes of the people, who, by religious controversy, were made, as it were, artificial members of society, and felt the inexpressible and captivating delight of thinking and acting for themselves, and of touching and affecting general society. The clergy, irritated to madness by the dissolution of their magic superstition, and looking forward to the total destruction of their profitable fable of the church, persecuted the thinking and reforming people; and this laid the foundation of that perception of religious liberty, which immediately connected itself with political liberty in Scotland so early as the reign of James V."

"To women, somehow or other, we have been indebted from the beginning for fortunate revolutions.

"To the beauty, gaiety, and imprudence of Mary Stuart, the daughter of James V. we are indebted for the present state of Britain, such as it is. Had Mary been prudent, Scotland might have become a popish monarchy. England at best would have been under its old monarchy (with proper address, under the Stuarts), and we should not have had occasion to deprecate Gallic freedom with the monstrous insanity of modern Englishmen; but to deplore the want of it.

"I stop rather to inquire concerning the comparative state of Britain, in this philosophical age of political sentiment, with France and other countries, that have had inferior advantages.

"Who but a clerk of the Treasury, or a lord of the king's bed-chamber, can contemplate this parallel without regret?

"It was in the last war of George 2d. that Great Britain laid herself under the necessity of defending her wide-extended dominion; and of asserting her claim to be the first nation upon earth. The contest was bloody and expensive, but the end was glorious—The enemy prostrate and breathless, empire extended, honour maintained, peace established, and, like the sun rising after a storm, a young and native monarch holding the sceptre, and ascending the throne, amidst the acclamations of the freest and happiest people on the globe.

"These acclamations are heard no more. A system of corruption, established and digested early in this reign by a baneful aristocracy, has pervaded every rank and order of men, till the spirit of the constitution has fled, and left only the *caput mortuum* behind. The forms of our government have outlasted the ends for which they were instituted, and have become a mere mockery of the people for whose benefit they should operate.

"The prophecy of Montesquieu is fulfilled; and nothing can save the country but the fulfilment of the prophecy of Franklin. What that prophecy was, what this prophecy is, I leave to the curious to learn. What I have written, I have written; futurity will determine the truth of my own particular predictions, and whether I am to be remembered as a captious cynic, or a wise and Pythonic politician.

"To conclude: as I think it unnecessary to delineate the spirit of the times in Europe with respect to government, so I think it to be indispensably required at my hands, that I should, with respect to Scotland, deprecate the refusal of a militia to my country, the necessity for which was so eloquently set forth by my favourite Fletcher.

"That I should mark with my blackest coal the game licence act, which is an insidious and dangerous disarming of the Commons.

"That I should express my utmost detestation and abhorrence of the conduct of a first minister, who, calling himself the minister of the crown, with a treasonable audacity, should dare to advise the dissolution of a parliament, against the sense of a House of Commons, the only legal organ of the voice of the people, let that House be ever so ill constructed, and demand ever so much reformation.

"That I should loudly protest, that a

parliament ought to be allowed to die a natural death. And,

"That if a parliament, contemplating the foreboding, the ominous imperfections of the constitution, should on its death-bed provide for a remedy by the equalization of the representation of the people, it would prevent the dangerous concussion which must undoubtedly arise, and that quickly, from their political franchises being brought to the level of surrounding nations with a violent jerk. Let us not (said my admirable preceptor and friend, Adam Smith, author of the Essay on the Wealth of Nations) rashly believe that Great Britain is capable of supporting any burthen.

"Let us consider what hold we have now of the two Indies, of Canada, and our other lucrative dependencies. A blow may be struck, a blow will be struck, that shall reach the vitals of public credit, and it is an event which nothing but political insanity can induce public ministers not to provide against. But no provision can be made against this event, except that which has been pointed out by the finger of the genius of Britain's welfare.

"I will not offer incense to the living, but to the dead; I inscribe this and the following sheets to the memory of Sir George Savile, of Rufford Hall, member of parliament for the county of York.

"In Scotland the rights and liberties of the people had been determined, and fixed by multiplied instances of changing the order of succession, and attainting their sovereigns for treason against the rights of the people; and it is to Scotland and a Scotchman that the world is indebted for the establishment of the philosophical and logical principles of a free constitution, both in theory and practice. George Buchanan, the greatest man of his age, as well as country, established, by irrefragable arguments, in his treatise or dialogue concerning the rights of the people of Scotland, the rights of all mankind; was the father of whiggery, and, what is much grander, the father of that system which will one day verify the prophecies of the Christian scriptures, to the abasement of kings and the destruction of priestcraft.

"The same sentiments," he goes on to add, "kept up the sacred fire of freedom in France, in the midst of folly and despotism, till the progress of commerce, printing, philosophy, and literature opened the eyes of Frenchmen every where to discover that they were men, and ought to be citizens, that men were not born with gold chains about their necks, with stars upon their breasts, or coronets upon their heads: that it is the nature of kings, as hitherto constituted, to consider their interests as separate from the interests of their nations, and to watch continually like wolves or foxes for their prey, in order to destroy the citizens committed to their charge. That it is necessary, therefore, that they should have only the power of obeying the laws made by the people, with that of doing good; but that the power of doing mischief, either by prerogative or influence, ought to be taken away. These were the principles of Fletcher—principles that seemed extravagant, disloyal, and impracticable in his days, but which are now acknowledged almost every where, except in Spain, Germany, and England.

"From this busy period till the meeting of the union parliament, Fletcher was uniform and indefatigable in his parliamentary conduct, continually attentive to the rights of the people, and jealous, as every friend of his country ought to be, of their invasion by the king and his ministers; for it is as much of the nature of kings and ministers to invade and destroy the rights of the people, as it is of foxes and weasels to rifle a poultry-yard, and destroy the poultry. All of them therefore ought to be muzzled."

I will next show you the public opinion, as narrated by Arthur Young, in his 18th and 19th volumes of the Annals of Agriculture, and surely none will suspect Arthur Young of prejudice against the present government. The passages which I shall read you out of this book, are queries proposed to the public consideration, by Mr. Lofft, a member of the British senate, together with the answers to the same.

"Queries by Capel Lofft, esq. of Forston.

"Dear Sir,—You have often, and with success, invited discussions in the Annals, on subjects immediately or consequentially affecting agriculture. Will you approve the wish of proposing the following queries?

"1. What number of agriculturists, in the several counties of this island, may be computed to be without a vote in the choice of representatives?

"2. What effect may this deficiency of representation be reasonably regarded as having, relative to agricultural interests?

"3. What influence, in this respect, ought to be ascribed to the septennial duration of parliaments?

"4. Are the interests of agriculture at present, understood and regarded in parliament in proportion to their national importance?

"5. It is probable that a reform in the election and duration of parliaments, or either, would cause them to be regarded?

"6. What reform in the representation would be most conducive to this effect?

"7. What mode and circumstances of election?

"8. What duration of parliaments?

"9. Is this a fit season for such reform?

"Those who are directly engaged in agricultre, either as owners, occupiers, or husbandmen, form so great a part of the nation, that a view of the subject as it respects them,

will give a very general insight into its principles and tendency.

"I am persuaded you will not concur with some, who think this question cannot be discussed without disordering the peace of the nation, and endangering the existence of the constitution: on the contrary, I am certain there are those very friendly to both, who look to such an inquiry as the very means of preventing violent and precipitate measures, promoting confidence and tranquillity, and preserving the constitution."

Annals of Agriculture by Arthur Young.

"Replies to Mr. Lofft's Queries.

"Frickley near Doncaster,

"Sir; September 8, 1792.

"Before any attempt to answer Mr. Lofft's very pertinent queries, it will be necessary to premise, that whatever apparent weight, by representation, the agriculturists, or any of the lower orders of the state, may have in the legislature, it is so utterly absorbed, and rendered void by the superior influence of the crown and peerage, in the House of Commons, that a calculation, even of the number of agriculturists, who actually have votes, must, by no means, be considered as a *datum* for an estimate of their real consequence in that House. While the crown and peerage act in concert, the government of this country is virtually an aristocracy; and I fear it is approaching fast to the situation predicted of it, by the celebrated Montesquieu, 'Il périra lorsque la puissance 'législative sera plus corrompe que l'éxécu-'trice.' Esprit des Loix, tom. i. p. 324. The lower orders, of course, lie at the mercy of the government, until the middle class of citizens, shall assert its consequence, and obtain its natural level in the constitution; a circumstance as desirable and essential to the general interests of the nation at large as it is the real and durable interests of the crown and peerage in particular. By the middle class of citizens, I mean those men possessed of property, from the smallest portion, to a moderate degree of affluence; and this class may be defined, as ending where the real utility and elegance of life give place to its fastidious pleasures, magnificence, and pageantry; which last are only within the reach of such as are aptly called overgrown fortunes. This middle class includes all the inferior gentry, the yeomanry, and farmers, with nearly the whole of the manufacturing and commercial men in the kingdom. This class, then, constitutes the body of the state, in the aggregate of its numbers and property; and if the crown and aristocracy, or head of the state, will obstinately persist in refusing to legislate, in union with the body, where will be the barrier of their defence, from the lowest members, in any extremity of danger and public convulsion, which the history of mankind, in all ages and nations teaches us, are almost periodically to be expected, as the blazing eccentric comets of the political hemisphere? What an awful warning our neighbour France presents to the towering pride of the great men in the earth: the monarchy and nobility of that kingdom, the most powerful and numerous in the world, could not resist the shock of contending political elements, but have now fallen victims to the want of union and concord with the middle class, or body of the state."

"Replies to Mr. Lofft's Queries.

"1. I think there are, at least, one million of agriculturists in this island (including labourers, to whom, I presume, the query extends) without a vote in the choice of representatives: these, with their families, amount to more than five millions of souls, or above the one half of the whole population of the country.

"2. This deficiency of representation, has certainly the effect of diminishing the consequence of that which in common sense and policy, ought to be the first concern in the state; it follows then, that the real interests of the agriculture of the kingdom, are very little regarded or known in the House of Commons.

"3. As the House of Commons is now constituted, it matters not to the agriculturists of this nation, whether the duration of parliaments be septennial or septuagesimal; perhaps it would be better if there were none at all.

"4. The interests of agriculture are certainly not at all understood and regarded in parliament: witness the duration of tythes, the influence they and the manerial claims have in preventing the inclosures of commons, now utterly useless to the community, also the enormous expense and trouble of applications to parliament for that purpose: in addition to these discouragements, sufficient of themselves to proscribe and destroy the plough, as if it were an implement of no use or value: has not an act been recently passed, by which the American farmer, with very trifling rents and taxes, and tythe free, is allowed a competition with the British farmer in his own markets, though he is crippled as above stated? Yet the British farmer is no advocate for a monopoly, and is ready to allow, that the people of England have a good right to be supplied with corn at a moderate price; take off his shackles, and the British farmer will have the advantage in competition with any farmer upon earth, with a free corn trade. Perhaps the best answer to this query may be given, by stating these plain facts: an annual import of foreign grain to a vast amount:—ten millions of acres of uncultivated land, waiting only for the fiat of the legislature, to enable Ceres, with her golden harvests, to triumph over the chaotic reign of heath, and whins, and mutton-bones.

If the senators of Great Britain did not love racing and fox-hunting better than the plough, could these things exist? I am here reminded of our good editor's remarks on the poor peasants of Liancourt, who were actually inclosing and cultivating the duke's wastes for their own use.—[See his Travels in France, p. 266.]

"5. It is very probable, that a prudent reform in the election and duration of parliament, would secure to the interests of agriculture their proper attention.

"6. Let the House of Commons consist of five hundred representatives for the counties of this island; the number for each county to be proportioned to its extent and population.

"7. Let every parish, or small district in the county, send a deputy resident in such parish or small district, to the county town, the deputy to be chosen by ballot, in a meeting of the men of the parish or district, above the age of twenty-one years. No person to declare himself a candidate for this office, or to canvass, bribe, or otherwise endeavour to obtain votes, on pain of imprisonment, and confiscation of effects. The deputies of the parishes or districts, thus elected, to assemble as soon as possible after their election at the county town, to proceed to the election of the representatives for their county in parliament. Let the deputies, when assembled, choose a president, the president immediately nominating, with consent of the assembly, a committee of six deputies, who after such nomination shall, out of the place of assembly, make out a list of such of the said deputies of parishes, or districts, as they deem most proper to represent the county in parliament; the president to read over the list to the assembly, after which each person on the list shall be severally voted for by ballot. On all occasions of equality of number, &c. &c.

"8. The duration of parliaments to be triennial.

"9. All seasons are fit for reform, and the present is particularly so: a wise man, in prosperity will ever endeavour to secure himself against the return of adversity, in the best manner he is able; and will not, by a dangerous security, delay a salutary design.

"It gives me pleasure to see that the editor of the annals of agriculture is not alarmed with the idea of introducing that terrible word reform, the bugbear of weak and wicked minds. How intolerable it must be, to the spirit of a free and independent Englishman, to hear the quondam reformers of parliament, men now possessed of high offices and emoluments, make specious orations against reform. Such men, being parties in the case, and reaping to themselves the foul harvest of abuses, ought not, in common decency, to say one word; at least what they say ought no more to be attended to, by independent men, than as the speeches of those who they know are intending to deceive them, for their own profit: but the frequency of this circumstance must induce honest men to fear dangerous revolutions, far more than to hope for salutary reforms; for I believe the present masters of this country cannot even yet define Englishmen, as the tyrant of Rome once did the degenerate Romans, homines ad servitudinem parati. Though I confess, the servile echoes to the late proclamation, apparently give the ministry some grounds for the assumption of it as a principle, that we are a people ready for slavery, and to be managed as such: yet ministry ought to know, that corporations are not towns, and that the great body of the people, are not in habits of corrupt and corrupting obligation to the numerous host of their creatures."

After such information, was the public not to be alarmed? And if things really are in such a state—if our constitution is really thus on the verge of destruction—ought not the public to be roused by every means, to prevent its total annihilation? Convinced of this, could wise and prudent men with-hold from stepping forth, to prevent the evils to be expected from such an event; if, as it is now apparent, the evil is unavoidable? And the more so, that the means which presented themselves as the most prudent for counteracting the calamities, if they should fall upon us, I mean the union of the people in heart and mind, were the only means of averting these calamities themselves; because the only effectual means for restoring the constitution to its original principles, by a substantial parliamentary reform.

Our opponents use the most strenuous exertions to misrepresent our designs and purposes; but have they proven that we have endeavoured to overturn the constitution? They have only given you assertions, and we are not bound to prove the contrary, nor need we; the contrary is apparent to every unprejudiced mind. It is because evils exist which tend to subvert the constitution, that we are associated to seek the removal of these evils, and to prevent their farther progress in the undermining of the same. And it is proven to you, by the prosecutor's own witnesses, that when Thomas Elder, esq; and Harry Davidson, &c. and the multitude with swords and staves attending them, for I cannot call them magistrates, not being able to recognize any legal authority under which they acted; —when they violently broke up the meetings of our convention;—when they came the first night to disperse us, we were actually beginning to consult about the execution of a former resolution, viz. about applying by petition to the House of Commons, for that reform which alone seemed to us adequate for the removal of those evils by which we apprehended our constitution endangered. We were interrupted in this legal and constitutional business that we had that night. We assembled the next evening out of the town; thus giving way to violence, and proving our

disposition to peace, and that, as much as was consistent with duty, we would avoid giving offence, in proceeding upon the same business of an application to parliament. The lord advocate has avoided the taking any notice of this circumstance, though, if these are the minutes of our convention, they must contain, first, an unanimous resolution to apply to the House of Commons by petition; next, a resolution to take under consideration the means of executing that resolution; and thirdly, a resolution to make this the subject of deliberation on that very evening, on which we happened to be dispersed, expecting that the previous matters would, by that evening, be all settled.

The solicitor general and the lord advocate, have exerted all their powers to impress you with the belief, that the convention must have had a design to overturn our happy constitution. They said we were pursuing a thing inconsistent with the constitution, and which never came into the minds of those who framed the constitution:—that we were seeking it on the plan of the French convention, and that they must be right in the apprehension which they have formed, since we were at so great pains to keep our doings a secret.

As to the first of these averments; no person, in the least acquainted with the history of Britain, can deny the former existence of annual parliaments; and he must also acknowledge, that universal suffrage is the very principle of the constitution of the British House of Commons. But the fact is this, the British constitution is neither more nor less, than the independent spirit of the nation, always disposed to trust too much to their rulers, but finding them, at any time, to have abused this confidence, always chastising them, and restricting their power where they found it dangerous, and increase the control of their own will, as the circumstance of the case required.

Much clamour has been made against the manner of our proceeding. The lord advocate sees distinctly the revolution of France in every step. Circumstances the most trivial and accidental, arising from the wit and humour of a very few individuals, and which the convention never designed to open a thought on, seems to have given the greatest alarm to those, who, misled by calumny, had previously been made to believe that the Friends of the People were in concert with the French. And, considering such calumny, how could we treat it by more marked contempt, than by holding up such empty bugbears to the deluded, as nurses do to children to frighten them to sleep.

The great burthen of the third division of charges, and which have been magnified to the highest by his lordship, is the supposed motion of a convention of emergency, and the appointment of a secret committee; but concerning both of which not a single thing is charged, as if done by me. I need not therefore exhaust your patience to hear me farther on the subject; I shall only crave your attention to the evidence itself, of the witnesses produced by the crown lawyers. To what does it amount, supposing these to be the true minutes of the proceedings of the convention, though not its real minutes? It amounts to these things only, namely, that the convention dreading the introduction and passing of a quietism, or conventicle bill, which they cannot view in any other point of light, but as the putting on of the grave-stone of the liberty of Britain,—with the view of restoring on a proper remonstrance against so grievous a measure, and of getting the same authenticated by the people's subscriptions before the bill could pass through the House, agreed to have an interim meeting; and in order to avoid the tedious forms of calling such a meeting, prescribed by the standing rules of the convention, namely the procuring the consent of ten towns, having societies of the Friends of the People, for an interim meeting of convention, appointed the same to be called by a confidential committee, in a way which appears to them best calculated for a speedy assembling of the delegates. This confidential committee is named a secret committee, and what is the difference between the two terms, unless it be that the one is shorter. Is there any thing seditious in this? Is it sedition to complain and remonstrate against what we judge of the most dangerous tendency to the constitution? If not, what was there to be apprehended from calling a meeting, to petition and remonstrate against it, in the way that seemed to the convention most adequate to the doing of this timeously.

The bringing foreigners into the country, has ever been considered as the most dangerous to the liberties of this country. It has already been experienced in a way never to be forgotten; and the minister that would attempt it, would be a traitor to his country. I could not conceive a stronger reason for the people assembling to remonstrate; and I trust that, in the present crisis, the measure must appear, to every unprejudiced person, as the most dangerous that ever could be adopted, both against the liberties and peace of the country. And I trust that you, gentlemen of the jury, must approve of the honest patriotism of the British convention, in providing for a due remonstrance against this and every such attempt.

Gentlemen of the jury, after what I have already instructed relative to that part of the indictment which charges me with contempt of authority, and resisting the sheriff and magistrates of Edinburgh, it does not appear to me as necessary to add any thing. It is evidently proven, as I then observed, that the provost and magistrates, the proper judges of such an offence, had already taken cognizance of the whole of that matter, and had also assoilzied me; and therefore, the lord advocate

had no right whatever to institute a new suit in this case, any more than in the affair of the Dundee address.

I shall therefore now only request your serious attention to a few paragraphs respecting your own duty, which I shall read you from a very sensible book, though the same must already be well known to you; and then address you upon the whole in a few words.

"As juries have ever been vested with such power by law, so, to exclude them from, or disseize them of the same, were utterly to defeat the end of their institution. For then, if a person should be indicted for doing any common innocent act, if it be but clothed and disguised in the indictment, with the name of treason, or some other high crime, and proved, by witnesses, to have been done by him; the jury, though satisfied in conscience that the fact is not any such offence as it is called, yet because [according to this fond opinion] they have no power to judge of law, and the fact charged is fully proved, they shall, at this rate, be bound to find him guilty; and being so found, the judge may pronounce sentence against him, for he finds him a convicted traitor, &c. by his peers. And thus, as a certain physician boasted, that he had killed one of his patients with the best method in the world; so here should we have an innocent man hanged, drawn, and quartered, and all according to law.

"Suppose, for instance, a man should be indicted, For that he, as a false traitor, not having the fear of God before his eyes, &c. did traitorously, presumptuously, against his allegiance, and with an intent to affront his majesty's person and government, pass by such or such a royal statue or effigies, with his hat on his head, to the great contempt of his majesty and his authority, the evil example of others, against the peace, and his majesty's crown and dignity. Being hereupon arraigned, and having pleaded not guilty, suppose that sufficient evidence should swear the matter of fact laid in the indictment, viz. That he did pass by the statue or picture with his hat on; now imagine yourself one of the jury that were sworn to try him;—what would you do in the matter?

"Nothing can be clearer than the duty of jurymen as defined by Magna Charta. Wherever the statute law has not provided a specific punishment for any crime, it is the duty of the jury to determine the extent of the punishment. The practice of leaving that to the Court is a desertion of their duty, and repugnant to the principles of the constitution.

"The words of Magna Charta are, That no freeman shall be amerced for a small fault, but after the manner of his fault, and for a great fault after the greatness thereof; saving to him his contenement, and a merchant saving to him his merchandize; and none of the said amerciaments shall be imposed, but by the oaths of honest and lawful men of the vicinage. Thus our forefathers not only prevented a judge from imposing the fine, but likewise tied up the hands of the jury from ruining a man by an excessive fine;—in all cases reserving to the criminal the means of a future livelihood.

"But on the other side, when the matter in issue, in itself, and taken as a naked proposition, is of such a nature, as no action, indictment, or information will lie for it singly; but it is worked up by special aggravations into matter of damage, or crime; (as that it was done to scandalize the government, to raise sedition, to affront authority, or the like, or with such or such an evil intent); if these aggravations, or some overt act to manifest such ill design or intention, be not made out by evidence, then ought the jury to find the party not guilty. For example:

"If the jury shall honestly refuse to find the latter in cases where there is no direct proof of them (viz. That such an act was done falsely, scandalously, maliciously, with an intent to raise sedition, defame the government, or the like), their mouths are not to be stopped, nor their consciences satisfied with the court's telling them, You have nothing to do with that; it is only matter of form or matter of law; you are only to examine of fact, whether he spoke such words, wrote, or sold, such a book, or the like. For now, if they should ignorantly take this for an answer, and bring in the prisoner guilty, though they mean and intend the naked fact, or bare act only; yet the clerk recording it, demands a farther confirmation, saying to them, thus: "Well, then, you say A. B. is guilty of the trespass or misdemeanor, in manner and form, as he stands indicted; and so you say all?" To which the foreman answers for himself and his fellows, "Yes." Whereupon the verdict is drawn up—'The jurors do say upon their 'oaths that A. B. maliciously, in contempt 'of the king and government, with an in-'tent to scandalize the administration of jus-'tice, and to bring the same into contempt; 'or to raise sedition, &c." (as the words before were laid); spake such words, published such a book, or did such an act, against the peace of our lord the king his crown and dignity.

"Thus a verdict, so called in law, *quasi veritatis*, because it ought to be the voice, or saying, of truth itself, may become composed in its material part of falsehood. Thus twelve men ignorantly drop into a perjury. And will not every conscientious man tremble to pawn his soul under the sacred and dreadful solemnity of an oath, to attest, and justify a lie upon record to all posterity? besides the wrong done to the prisoner, who thereby perhaps comes to be hanged (and so the jury *in foro conscientiæ* are certainly guilty of this

murther); or at least by fine, or imprisonment, undone, with all his family, whose just curses will fall heavy on such unjust jurymen, and all their posterity, that against their oaths and duty, occasioned their causeless misery. And is all this, think you, nothing but a matter of formality?

"Much of the office of jurors, in order to their verdict, is ministerial; as not withdrawing from their fellows after they are sworn; not receiving from either side evidence not given in court; not eating and drinking before their verdict; refusing to give a verdict, &c., wherein if they transgress they may be fineable.

"To what end is the jury to be returned out of the vicinage (that is, the neighbourhood) whence the issue ariseth? to what end must hundredors be of the jury, whom the law supposeth to have nearer knowledge of the fact than those of the vicinage in general? to what end are they challenged so scrupulously to the array and poll? to what end must they have such a certain freehold, and be *probi et legales homines*, and not of affinity with the parties concerned, &c. if after all this, they implicitly must give a verdict by the dictates and authority of another man, under pain of fines and imprisonment, when sworn to do it according to the best of their own knowledge?"

Gentlemen of the jury;—Having submitted already some things that appeared to me to be altogether necessary for your consideration, and for my own exculpation, I shall now, in a very brief manner, state the heads of my defence. To these I would beg your particular attention, because, by bestowing this, you will be the better able to judge the cause. Remember you are called upon this day, seriously to decide concerning the conduct and fate of one of your fellow-men, who has been accused of a crime of a very heinous nature, no less than that of attempting to break the peace of society, and of being engaged in practices hostile to the constitution of this realm. You already know what has been urged against me; and you will not discharge your duty to God and your country, you will not fulfil the sacred obligations which you have come under, if you do not hear and consider my defence, with an unbiassed mind,—with a mind anxious to discover truth, and to render a just decision. But, gentlemen, I hope that you will not only judge my cause with that force of mind which resists prejudice; but in the confidence of my innocence, permit me to add, I trust that you will show that you possess that rectitude which places you superior to influence, that you possess that honesty and virtue of mind, which would make you, undismayed, withhold your consent, when the hand of power solicits your approbation.

I am charged with sedition, and in support of this allegation, it has been attempted to be proved that I have done such and such acts, or have spoken or written such and such words, as amount to the crime. My entire innocence of this crime of sedition, I most solemnly avow; and it is your business then, when I deny the crime, to investigate whether and how the charge has been proved. My defence divides itself in two parts. You are to examine, in the first place, whether the evidence of different kinds that has been brought before you, is sufficient to prove the facts alleged, or to fix on me the writings, speeches, and acts, specified in your libel: and farther, being judges of law, as well as of fact, you are, in the second place, to determine whether these speeches, &c. even if they were proved to be mine, constitute in their author the crime of sedition.

First. With regard to the former of these points, the proof of the simple facts,—I believe it is a maxim, not altogether fair, but agreeable to the dictates of common sense, that when you are falsely accused of a foul crime, you may, and indeed ought, to employ every lawful expedient in your own defence. It is not, therefore, from any mean desertion of principles, it is not from any weak dread, that any part of my conduct about politics will not stand the strictest scrutiny, and may be tried by the severest rules,—those rules which should ever regulate the conduct of every good man, and good citizen,—I say, it is not from the apprehension that any of my speeches, writings, or practices, are criminal, that I call upon you to investigate the nature and amount of the evidence adduced, in support of the several charges. Perhaps, some may think it was unnecessary to refuse, while I am conscious of my own integrity, that which I deem to be no crime; and may therefore judge it better that I should have admitted, that all such things have been done by me, as libelled, and should content myself with your opinion of their quality and import. This, however, I could not do, even supposing I had been inclined to it for the purpose of saving you some trouble, while measures, the most insidious, and, but for some harmless difference in political opinions, the most unprovoked upon my part, are employed to circumvent and destroy me, and ruin my family. I am fully warranted to deny, on the whole, a charge so unjust. I do not beg then, gentlemen, that you would have the generosity, but I demand that you will do me the justice, to attend to every sentence of the libel; weigh the evidence brought in support of it, and deliberately judge, how far the allegations are truly proved to be matters of fact, or to have taken place simply as stated. Besides, you are to try the cause, and to decide concerning the truth or falsehood of the charges, from the evidence set before you, and in no other way; and this, gentlemen, you must know to be your bounden duty. With these general remarks, I leave you to determine as to the truth, or falsehood of the alleged facts.

Secondly. I will now beg your attention to the second part of my defence, in which I affirm that the import of all that has been alleged, or specified to have been said, or done by me, even though it were completely proved, will not amount to the crime of sedition, or to any crime whatever. Under this second, which in this case, is by far the most important branch of your duty, you will examine the facts, or matters charged in the indictment, in two points of view. Gentlemen, in the first place, you are to weigh the import of the facts charged themselves; and in the second place, you are to consider with what intention they were done; for unless you can say from the proof adduced, that the alleged speeches, and other matters libelled on, are of a seditious import, and besides, that they proceeded from a wicked and felonious intention in me, the accused person, you cannot find me guilty of the crime charged in the indictment. With respect to the former of these, I need not tell you, that, if the words and actions ascribed to me can be found, on a fair interpretation, to import nothing wrong, there can evidently be no crime; for allowing that I had discovered the most perverted and wicked intention in the matter, yet, if all that I did was of no seditious import, or tendency; weakness, and folly, could only incur contempt, and be treated with derision. Now, I have no doubt that I shall be able to satisfy you, and all candid persons, that every thing that is alleged to have been done by me, amounts to nothing criminal; to nothing more than what any Briton, with the most entire regard to the constitution of his country, has a full and undoubted right to do. Read, I beseech you, and take a connected view of the whole writings, speeches, and proceedings referred to in the indictment, and you will then be able to judge of their import, much better than you can be from the partial extracts and mistaken details inserted in the libel.—What can you discover there inconsistent with the principles of the British constitution, or subversive of the authority of the British government? is there aught else to be found there, but a sincere wish, and an ardent, but honest attempt to procure that relief from errors, or remaining imperfections,—to effect those political improvements,—to spread that information,—and to enjoy that friendly and mutual intercourse and advice of our fellow citizens, that seem necessary, to improve the situation of society in Great Britain,—to give its constitution purity and perfection, and to procure to the inhabitants of these realms, greater security, satisfaction, and peace? Is it not the birth-right, the oldest and most invaluable privilege of every Briton, to possess the power of pointing out those errors, which he conceives to exist in the administration of government? if we discover wherein, according to our opinion, the happy constitution of this country, the constitution of the three estates of King, Lords, and Commons, may be improved;—if we suppose, with some reason, that the privileges of those, connected with one estate, may require to be extended and improved, and may readily be so, without on the one hand occasioning any detriment to the royal prerogative or to the privileges of the members of the other estate; and without, on the other hand, introducing disorder and anarchy among the inhabitants at large;—if, in the pursuit of these important objects, we reckon it improper to rely wholly on our own opinion, and wish therefore, to collect the sentiments of our fellow subjects; and if we think it impertinent to trouble the legislative body, who alone are competent to remove the errors, grant the reform, and confer the improvements sought after, with our solitary and inept application;—I say, when with these views we are actuated, is there any thing wrong in honestly declaring and avowing our sentiments, and openly consulting with our fellow citizens; and, especially when we do so in such a manner, as becomes the attentive and dutiful subjects of a regular government? Has not this, and even more than this, been done by the favourite minister of the day, and many of his adherents? they who now discover their hot zeal for the constitution, by watching, with such anxious concern and suspicion, the actions of others. But I need not insist, for it is known to every one what has been done, and what has been said by them. You know their sentiments were the same with ours. You know that the friends of reform in those less irritable times, met openly and without obstruction, and that their words and conduct (not less expressive of their sentiments, than our words and actions are of ours at present), if not approved of by every one as proper, were not denied by any one to be consistent with the spirit of the constitution, and the liberty and discussion permitted by our laws.

With such upright views, to meet with undue opposition, contumely, and even oppression from our fellow subjects, who happen to differ from us in opinion, must surely be irksome, and calculated to exasperate. But we have hitherto behaved, and will always conduct ourselves with moderation and quietness. Though we have reason to believe, that the present opposition to our sentiments and conduct, is too pointed and too personal, to arise wholly from a simple difference of opinion; and, though we may suspect that some oppose us, because they derive advantages from the corruptions, which we desire to have removed, yet no bad treatment has ever yet seduced us from our principles, or provoked us to turbulence; and it has been our constant prayer to the God of Peace, that amidst the shakings of the nations, he would bless with unity and concord, the inhabitants of these islands. As we conceived the civil magistrates to be rash, and to act unconstitutionally, in dispersing and forbidding our

meetings, our astonishment at what we deemed an unmerited insult, and our desire to assert our privileges, will sufficiently account for our wishing to continue our meetings.—No rudeness, however, was ever meant or shown by us, as the witnesses for the crown have attested; and another public meeting, if it could not be procured in Edinburgh, but at the risk of public order and tranquillity in the smallest degree, would neither have been desired, nor attempted. You will see then, gentlemen, that there is nothing of a seditious or inflammatory tendency, to be inferred from our behaviour to the magistrates and sheriff, even though in our opinion, they unwarrantably and forcibly deprived us of our acknowledged privileges.—Had we given place to the arm of power, directed as it then was, even more slowly than we did, it would have been no more but a trifling misdemeanor, by no means an approach to sedition. It could only be said, that our submission was shy, for resistance we made none.

The interpretation which has been attempted to be put upon some of the inscriptions quoted in the libel, by the lord advocate is altogether forced and constrained. Nothing more was ever sought after by myself and the other Friends of the People, than the information of the country, and the acquisition of friends to reform, to be obtained in a manner consistent with the spirit of the constitution, and respectful to the legislature. If we wished for more, it was the steady adherence, and the amicable union of the friends of reform, and good concord and neighbourhood with every class of citizens, that we might give the necessary respectability to that cause, which we judged of prime advantage to the nation. Our solicitous perseverance in the pursuit of a constitutional reform, can never, in fairness, be construed as an insult to the legislature of our country, far less can it be branded as an attempt to destroy its approved and happy constitution.

The palpable misconstruction attempted to be put on our conduct;—I mean on the conduct of the general society or collection of the delegates of the Friends of the People, called by way of distinction from the others, the British Convention;—from certain words supposed to be similar to those used by the French having been accidently employed, is hardly deserving of notice. The use of such terms may vex a weak ear, or enrage a peevish mind; but it will neither disgust nor alarm a sound and happy patriot, nor any true friend to the British constitution. The employment of these words arising wholly from accident, or from the whim of one or two individuals, might be defended; as they are sufficiently logical, not uncommon in our language, and not disrespectful to any thing British: but they are too inconsiderable to require any farther apology.

"TAKE NOTICE OF THE NATURE OF THE CRIME CHARGED, AND WHAT LAW THE PROSECUTION IS GROUNDED UPON, AND DISTINGUISH THE SUPPOSED CRIMINAL FACT, THOUGH YOU MAY THINK THE SAME PROVED, FROM THE AGGRAVATING CIRCUMSTANCES WHICH ARE NOT PROVED."

To conclude, allusions have been made to the affairs of France. But with these I have nothing to do. This much, however, I will say, that excesses and sanguinary measures make no part of my principles. And I trust that such measures, and such conduct as has been attributed unjustly to that people, will never, and far less at present, be adopted by British tribunals, nor approved of by British subjects; and may He who hath the hearts of all men in his hand, influence you to an unbiassed love of the truth, and direct you to return such a verdict as will be consistent with the future peace and consolation of your own minds,—such a verdict as will accord with those principles of free inquiry and communication, which are natural to men, as rational and social beings, and which are recognized by the law and constitution of this country.

Permit me to remind you of the advice of a learned judge.

"I verily," saith he, "had rather twenty evil doers should escape death through tenderness, or pity, than that one innocent man should be unjustly condemned."*

I shall conclude with that excellent advice of my lord Coke, which he generally addresses to all judges, but may no less properly be applied to jurors:——

"Fear not to do right to all, and to deliver your verdicts justly according to the laws; for fear is nothing but a betraying of the succours that reason should afford: and if you shall sincerely execute justice, be assured of three things:

"1. Though some may malign you, yet God will give you his blessing.

"2. That though thereby you may offend great men, and favourites, yet you shall have the favourable kindness of the Almighty, and be his favourites.

"And lastly, that in so doing, against all scandalous complaints, and pragmatical devices, against you, God will defend you as with a shield.—'For thou, Lord, wilt give 'a blessing unto the righteous, and with thy 'favourable kindness wilt thou defend him 'as with a shield.'" Psalm v. 15.

SUMMING UP.

Lord Justice Clerk.—Gentlemen of the jury;—After so long a trial, and after hearing so much, I should not think it proper to detain you long; but without running over and reciting the evidence, I would submit to your consideration, a few general observations, which may be of use in forming your opinion upon the case.

Gentlemen, the crime here charged is that

* See Vol. 7, p. 1329.

of sedition; by the penal law of Scotland, it is a crime very different from the law of England; for it is not necessary to have any act of parliament for it. But gentlemen, although there is no special act of parliament for it, it is very well known that it is a crime of a high nature, and of a dangerous tendency. I take the crime of sedition to be violating the peace and order of society; and it is attended with different degress of aggravation, according to what is the object of it. When sedition has a tendency to overturn the constitution of this country, it borders upon high treason; and if it goes that length, it loses the name of sedition, and is buried under the greater crime of high treason; and a very little more than is contained in this indictment, would have made it the crime of high treason. The crime charged is that of sedition, and the public prosecutor has, in the minor proposition, enumerated a variety of circumstances from which he infers this crime of sedition, and the conclusion of the libel is, that these facts or parts thereof, being found proved by the verdict of an assize, he shall be punished with the pains of law.

Gentlemen, although the public prosecutor in justice to the party, that he might see his way clear, to make his defence, has enumerated a variety of circumstances from which he infers, that this panel was guilty of the crime of sedition; in order to procure a verdict, finding him guilty of these crimes, it is not necessary that all these facts should be proved, but the question you are to try is, whether he has been guilty, art or part, whether such facts and circumstances as are stated are not sufficient to convince you, that the panel has been guilty of the crime of sedition; if you upon the whole are satisfied, that what is proved against him does not amount to the crime of sedition, or is not sufficient to establish his guilt, you will find him not guilty, or the libel not proved; but if you think it is sufficient, then you will find the opposite verdict that he is guilty, or that the libel is proved.

Gentlemen, in considering this case, one thing occurs to me, and that is the conjuncture under which these facts are alleged; it was during the time when this nation is engaged in a bloody war with a neighbouring nation, consisting of millions of the most profligate monsters that ever disgraced humanity, justice will never enter into their ideas, but they swallow up all before them; and I say, gentlemen, that the greatest union in this nation is necessary in these circumstances, to support us under this war; and therefore, gentlemen, supposing that in short this nation has been feeling some grievances from any imperfection attending the constitution, I say under these circumstances this is not the time to apply for relief, and I appeal to your own feelings, and your good sense, if it would not be brought forward better at any other time, and that we should employ all our force to get rid of that foreign enemy, upon which the safety and the happiness of the country does in a great measure depend.

Gentlemen, any person who had never heard of the name of Great Britain, and knew nothing of its constitution; if the proceedings of these Friends of the People and this convention and their publications were put into his hands, I think the conclusion that would be naturally drawn by such a person would be, that it was a nation, the most wretched under the sun; that we were living under the most despotic government upon the face of the earth, and were the most unhappy of mankind; that I think would be the idea of a man who knew nothing of this country, upon reading the publications of this convention. But, gentlemen, I appeal to your own feelings and your own knowledge, how much it is the reverse of that. I believe every one must admit, that of all the nations under the sun, Great Britain is the happiest; and that under all the imperfections that may attend their constitution, it is the most complete system of government that ever existed upon the face of this earth,—with all its imperfections. I am sure, gentlemen, you must all be sensible that you enjoy your lives and your properties, and every thing that is dear to you in perfect security, every man is certain that he will not be deprived of any thing that belongs to him, and there is no man, let him be as great a grumbletonian as he will, if he is asked where he is hurt by the imperfections of the constitution, he cannot tell you, but on the contrary that he is living happily under it. Gentlemen, when that is the case, what construction must you put upon the proceedings of a society, who represent this country as on the very brink of destruction; I submit to you whether that is the work of the people, who have a real regard for society, and if you are of opinion that these meetings are of a seditious nature and of a seditious tendency, when the question comes home to the panel at the bar, you must find him guilty; for, gentlemen, I must observe to you, that it is a rule in law, and a rule in good sense, that if a meeting is illegal, all the members of that meeting are liable for every thing illegal that is done at that meeting, the whole meeting are understood to be guilty, art and part in the crime that is committed, and they are all and each of them amenable to the laws of their country for what they have done. And at common law, even in the commission of the crime of murder, and robbery, some persons may be more active than others, but they are all guilty art and part, and all equally liable to the punishment of the law; and those who have been more cruel than the rest may have a greater sting in their own minds, but in the eye of the law, they are all guilty art and part. Then, gentlemen, you are to consider how far you can think Mr. Skirving innocent, when it is

proved to you, by a number of witnesses,—some of their own convention, and what is best of all, is his own declaration,—that he himself was not only present at all their meetings, but was secretary of the society, entrusted with every thing done by them, and according to the proof this day laid before you, when the officers of the law went, they seized all the papers and minutes of their proceedings. If you are of opinion that those meeting are of a seditious nature, how is it possible to find this man innocent? the whole meeting being guilty art and part, and he, being secretary, is the most active man, if one man can be more guilty than another, it is that man now standing at your bar.

Gentlemen, that is the general nature of the cause I shall not go over the particulars, but there is one thing I must take notice of just at the very first.—Fyshe Palmer's publication, of all that ever I read, is of the most seditious tendency, and a more wicked publication it was not possible for human invention to devise, and accordingly Palmer was very justly indicted for that composition, and he was found guilty at the last circuit at Perth, by a most respectable jury, in consequence of which he is condemned to banishment, by transportation. Gentlemen, it is clearly proved and acknowledged by Skirving himself, that he was active in circulating that libel, and there cannot be a doubt that if a man circulates seditious libels, he is equally guilty with the man who composes it; if a man composes a seditious libel, and it goes no farther, society is not hurt by it, but the man who publishes it, does more mischief than the man who composes it. To be sure Palmer was justly found guilty of sedition, because he allowed it to go out to the world; and I say Skirving is equally guilty of the pains of law with Palmer; and it would be very difficult for me to conceive it possible, that this man, now at the bar, can be found not guilty.

Gentlemen, I will not run through all the other evidence, for indeed almost every article of this libel is proved; but the next article is the hand-bill; it is true he does not seem to be the author of that hand-bill, but his name is at it, many thousands were printed and circulated, sent to the convention, and he does not find fault with it; that is acquiescing in the thing, and by not opposing his name at that writing, he renders himself art and part in that publication, which publication contains matter in itself, I think, of a very criminal nature. I own there is one part of it, the last paragraph that appeared to me to be of a very criminal nature indeed, and it is set forth in the indictment. "Had certain gentlemen countenanced this association last year, instead of pledging their lives and fortunes to prompt a corrupt and ambitious ministry to engage in a war, which could only bring guilt and ruin on the nation, we might have been still enjoying uncommon prosperity, and a happy understanding amongst ourselves as brethren: and now, if they will not manfully retract that very impolitic step, and immediately join their influence to the only measure which can prevent further calamity, if not anarchy and ruin, their pledge may be forfeited, and the Friends of the People will be blameless." What is the construction of that language? Why certainly that the people would be bound to rise, and that they were at liberty to destroy such tyrants; and that their lives and property would be forfeited, and these Friends of the People would do no harm in the cause of liberty, by cutting their throats:—that is the plain English of that paragraph, I can see no other.

Gentlemen, the other particulars are all clearly proved, that they held farther meetings in defiance of the orders of the magistrates. Gentlemen, they assumed that they wanted merely to obtain a reform in parliament. It is certainly a very lawful thing to apply to parliament, and God forbid it should ever be thought unconstitutional; but it was not a reform in parliament that was their object, but a reform to be brought about by force of arms of their own procuring; for they could not mean to obtain any redress from parliament, when they called themselves the British convention of the delegates of the people, associated to obtain universal suffrage and annual parliaments. It was impossible they could ever obtain from parliament universal suffrage, and for a very good reason, it is a thing that cannot exist; a nation could not subsist under such a government. And therefore, it was very plain what they meant, they could not mean to get redress from parliament, because they described parliament as corrupted, and the nation upon the brink of ruin.—"Is not every new day adding a new link to your chains? Is not the executive branch daily seizing new, unprecedented, and unwarrantable powers? Has not the House of Commons (your only security from the evils of tyranny and aristocracy) joined the coalition against you? Is the election of its members either fair, free, or frequent? Is not its independence gone, while it is made up of pensioners and placemen."—Now here I appeal to yourselves, whether you do not see that it was not a reform in parliament that was their object; but that they might rouse the common people, whose interest it was to join them to overturn the government. And indeed, gentlemen, the name of citizen and the honours of the sitting, and all the rest of it shows, that in short, they went upon the model of France, adopting it as their pattern; and they thought, that now, as the French had got into their hands the very dregs of the people, say they, why may we not by the same means get into our hands the same description of people in this country; and you see they had a committee of secrecy, and also a convention of emergency. Gentlemen, can you not apply to parliament

for a redress of the grievances that you may labour under? It is an absurdity in itself, that there should be any secrecy in that. They were about to establish a committee of secrecy, and a convention of emergency, which had a tendency to raise the people in arms.

Gentlemen, I have laid before you what occurs to me, and I leave it to yourselves; if you think that the commentary I have given is the proper one, and that the panel is guilty of the crime charged, which is sedition, you will find the libel proved. If you are of the contrary opinion you will find the libel not proved. I believe there is no crime known amongst men that has a worse tendency, especially when it goes to overturn the established constitution of the country.

Gentlemen, you will attend here to-morrow at two o'clock, to give in your verdict.

Mr. *Skirving*, my lord, may I not be admitted to bail.

Lord Justice Clerk. No, you cannot; it is contrary to a rule of court.

Tuesday, Jan. 7, 1794, 2 o'clock.

The names of the Jury called over.

Lord Justice Clerk. Gentlemen, who is your chancellor.

One of the Jury. Alexander M'Kenzie; and David Anderson, clerk.

VERDICT.

Edinburgh, January 7, 1794.

The above assize having inclosed, made choice of the said Alexander M'Kenzie to be their chancellor, and the said David Anderson to be their clerk; and having considered the criminal libel, raised and pursued at the instance of his majesty's advocate, for his majesty's interest, against William Skirving, panel, the interlocutor of relevancy pronounced thereon by the Court, the evidence adduced in proof of the libel, and the evidence in exculpation; they are all, in one voice, finding the panel William Skirving GUILTY of the crimes libelled: in witness thereof their said chancellor and clerk have subscribed these presents, consisting of this and the preceding page, in their names and by their appointment, place and date aforesaid.

(Signed) ALEXANDER M'KENZIE, *Chan.*
DAVID ANDERSON. *Clerk.*

Lord Justice Clerk. Gentlemen, you have returned a very proper verdict, and I am sure you are entitled to the thanks of your country for the attention you have paid to this trial.

Mr. *Skirving.* My lords, owing to an accident, I have been deprived of very considerable assistance, namely, the advice of counsel from London voluntarily transmitted to me. However, there is no help for it now; but there is one part of the advice of counsel, which may merit the attention, though not perhaps very orderly as to time, but if your lordship will allow me, I will state it. Upon the first page of the indictment it is said, "Whereas by the law of this, and every other well governed realm, sedition is a crime of a heinous nature and severely punishable." The observation of the counsel at London, is "it will be necessary to ascertain, correctly, the definition of the crime of sedition." Erskine, Inst. 8vo. Edit. p. 488, says "sedition consists in the raising of commotions or disturbances in a state." He indeed adds that it is either real or verbal, but sedition can only be that offence whereby an actual breach of the peace is committed in order to prevent the due course of law, and though words of a seditious tendency may be furnished, yet where actual sedition is charged, as in this case, words or libels alone, will not without a real act of sedition, be sufficient to maintain the indictment.

The crime charged is sedition, and the averment is, that the said William Skirving is guilty actor or art and part,* that is, in the phraseology of the Scots laws, that he is either principal or accessory. But as this is stated in the disjunctive, it does not appear with certainty, whether he is charged as the principal or as accessory. He cannot be both principal and accessory, nor can he be indicted for both offences—therefore the whole is void.

This is an objection which will apply in arrest of judgment, therefore reserve it till after the verdict.

Now, my lord, if there is any thing in that opinion, I plead it in an arrest of judgment, and as it is a thing not common in this court, I appeal to your lordships' candour, that if there is any justice to be obtained upon that point, I may obtain it.

Mr. *Solicitor General.*—As to the nature of sedition, it was fully discussed in argument before your lordships yesterday. With respect to this learned opinion of counsel, he may be a very good English lawyer, and very eminent in his profession, but is perfectly ignorant of the law of Scotland; because as that is stated, it would be impossible for any person to be convicted of any crime, because I never saw an indictment but what charged a defendant with being guilty actor, or art and part thereof.

Lord Justice Clerk.—If there had been any thing wrong in the proceedings, the Court would have taken it into consideration.

Mr. *Skirving.*—After all that was stated yesterday as to sedition, I could get no satisfaction upon it.

Lord *Eskgrove.*—My lords, the panel is charged in this indictment with sedition, which has been proved in a very distinct manner; and, my lords, I am always very sorry to pronounce sentence upon any of my fellow subjects for sedition, of the heinousness of which I had flattered myself, from two late instances, every man was so thoroughly sensible that I should not have occasion again to sit upon a trial of that kind.

* See Vol. 10, p. 307 of this Collection.

My lords, I still less expected to sit again upon the offence here charged. I mean that of attempting to imitate the example of the late revolution in a neighbouring country, in which country now exists every thing that is horrible in nature—blood-shed—massacre—murder; the throwing off the belief of a God, and abolishing the Christian religion. I should have thought all this a reasonable cause, why people that meant well, and were only wishing to amend our government, would have abhorred the idea of coinciding with them, in what has happened there. But my lords, from this libel, which is now found proved by the jury of this country, and a most respectable one; it seems that there have been unfortunately persons so disposed, so misguided, from motives, I hope good, as to adopt the innovation of the forms of procedure of that country, in their meetings, and which must strike every dispassionate mind with horror.

My lords, it matters not what my opinion, or that of any of us, is on the nature of this offence; or what is the nature of his guilt, independent of what has passed in this court; for suppose, if I had been able to have attended all the trial, which my state of health could not permit; but if I had, and it had been my private opinion, that this man acted from the best of motives, that the evidence against him was not complete, and that he ought to have been acquitted; all would have been unavoidable, in the situation in which I stand now; because, my lords, this libel has been found proven, and this panel has been found guilty in general by a respectable jury of his country, and therefore I am bound to believe that he is guilty of the crime of sedition as laid in the major proposition, and of one and all the facts charged against him in the minor proposition; he is found guilty therefore, art and part in the circulating and publishing of that shocking paper, which was the subject of the trial of Palmer at Perth, and which is engrossed in this indictment. The gentleman has been advised, he says, that a charge of being guilty art and part is an irrelevant charge. My, lord it was well said by the counsel for the crown, that that counsel, however great and eminent he might be in his profession of the laws of England, is totally ignorant of the laws of Scotland. And if he had been a wise man, he would not have meddled in what he did not understand. The gentleman spoke of acts of parliament; he does not know that there is a positive act of parliament that the charge of art and part shall be deemed sufficient. However, this panel, and I am very sorry for it, is found guilty art and part of the crime of sedition as stated in this indictment, and the court have recorded the verdict. My lords, he is found guilty art and part of the first branch of it, which is for circulating the seditious paper of Palmer. My lords, he is farther found guilty art and part of the second part of the libel, to wit, the advertisement which is styled a seditious and inflammatory hand-bill, bearing date, Masons Lodge, Black-Friars Wynd, 4th October, 1793, and bearing the subscription of William Skirving, as the author, by order of the committee.

My lord, this is a second paper, in which he is concerned; the purpose of which is charged in this indictment, as tending to rouse the people to unite together, to incite them to acts of violence, and the words of it calling upon the rabble to remember their patriotic ancestors, who shed their blood in the cause of freedom. I do not know what knowledge this panel has of the pedigree of the ancestors of the rabble, who shed their blood. I think it is very plain that if the rabble are to assist in the reformation of this country, the shedding of blood should have been omitted, unless it was to tell them that that was the way of reform, by shedding of blood. "Had certain gentlemen countenanced this association last year, instead of pledging their lives and fortunes to prompt a corrupt and ambitious ministry to engage in a war, which could only bring guilt and ruin on the nation, we might have been still enjoying uncommon prosperity, and a happy understanding amongst ourselves as brethren: and now if they will not manfully retract that very impolitic step, and immediately join their influence to the only measure which can prevent further calamity, if not anarchy and ruin, their pledge may be forfeited, and the Friends of the People will be blameless."—Telling them that their lives and fortunes would be forfeited, unless they did as that advertisement required them. In the next page it goes on, as to the British convention, the tendency of it, the maxims they held, and the purposes they had in view; in all of which this is found, that Mr. Skirving was an active member, making motions, and concurring in the resolutions that were there made.

A farther part of the charge is, for refusing to comply with the authority of the civil magistrates, when they were about to dismiss these meetings, which no person wishing well to the country could approve of. And then he is found guilty of this last advertisement, in which he speaks of the delegates, he says, "your delegates having a permanent existence, your several societies will be multiplied greatly, and means will be used to lay the business before each society individually, by printed bulletins."

My lord, these are the chief of the charges, stated in this indictment, and whatever my private opinion of the evidence may be, I dare say it was perfectly sufficient; but even if it was defective, I am bound by the verdict of this jury, which alone is now before me, and they have found unanimously with one voice, that this man is guilty in general, that he is guilty of the whole indictment.

My lords, that being the case, as a judge of

this court, I cannot take into consideration any feelings of compassion for this panel. I am bound to follow up this verdict of the country with the sentence which the law requires of me.

My lords, I need not say any thing with regard to the pernicious consequences of the crime of sedition, which certainly the different acts charged in the indictment amounts to; it effects every thing that is dear to a man, his life, his property, his liberty; but were I doubtful about it in my own mind, I should be satisfied with the judgment pronounced by this supreme court, upon another unfortunate gentleman, Mr. Muir. My situation of health did not permit me to be present at any part of it; but your lordship, upon his being found guilty, did pronounce a sentence of banishment to the plantations, by transportation for fourteen years against that gentleman; and I cannot, from the whole tenor of this indictment, find that the crime of which this man is convicted, is one whit less, and therefore I think the Court is called upon to place him under the same circumstances.

Lord *Swinton*.—My lords, in this case the jury have found the panel guilty, not only of sedition in general, but of all the particular charges that are contained in that indictment. It now comes to us to declare, and to inflict the punishment of the law upon him. Your lordship has heard an opinion upon that point very full and very solemn, which renders it perfectly unnecessary for me to take up much of your lordships time. I am afraid, my lords, that this unfortunate man, and many others, do mistake the nature of sedition, and he called upon the Court just now to explain what it is. My lord, I did yesterday, and shall again give my opinion of what it is: it does not consist merely in actual commotions and rebellion against the laws of the country, but it consists in every attempt to excite, by inflammatory discourses and illegal associations—I say, by these means to excite—the people to outrage and violence against the constitution, to hurt the public peace.

My lord, the offence of the crime lies in endeavouring to excite to violence. My lord, if there is no intention to excite the people to violence, many of these meetings may be innocent, many of them ridiculous. In this case they wished for universal suffrage and annual parliaments. One of these is a most ridiculous and absurd doctrine,—universal suffrage,—nothing can be so absurd;—annual parliaments, or a shorter duration of parliaments, may be matter of argument; but what I mean is, by inflammatory discourses and illegal meetings, endeavouring to excite the people to force and violence. Say they, we only meant to petition lawfully: petitioning parliament is most lawful, and I should be sorry that any person should think it unlawful; but in what manner is it to be done? My lord, is it to be done by numbers and by force? In that case it is war; and if a petition is suffered to be offered in that manner, the King may leave his throne, the Peers their benches, and the House of Commons their seats, for they exist no more. My lord, if any violence is offered, it ceases to be a petition.—If a poor person comes and asks charity, it is a petition; but if he uses a pistol to enforce it, it is no longer a petition; it is a robbery. The crime of sedition may be committed by illegal associations making use of French modes and terms.

My lord, the question then comes to be, what punishment the crime deserves. I conceive nothing less than that which was inflicted upon Mr. Muir. I do not know but the crime deserves more, but we cannot do less than punish the same crime by inflicting the same punishment. I have heard that this panel has a great family, and sorry I am for it; but the cases of Messrs. Muir and Fysbe Palmer should have led him to be industrious for his family, followed an honest occupation, and not have meddled with illegal associations. I think the crime deserves more; but taking every thing into consideration, with the circumstances of his family, I prefer the opinion your lordship has given.

Lord *Dunsinnan*.—My lords, this panel has been found guilty, by a verdict of his country, of a crime of a very different nature, and of a more dangerous tendency, than those common crimes which occur, and which are the daily subjects of trials in this court. My lord, it is the crime of sedition.—It has been proved, that these persons met for the purpose of subverting and altering the established constitution of this country, under the pretence, indeed, of reform; but I say, really to subvert the constitution of the country. And, my lord, from some other circumstances, which came out yesterday in the evening, and upon which the jury found him guilty, I confess I shudder to think of the horror that, in certain events, might have arisen from the train which this man and his accomplices laid, in different parts of this country.—Thank God they are disappointed.—Thank God we are still in possession of laws to protect the constitution, and to establish the security of the subjects of it.

My lord, it is our duty,—called upon as we are, it is our duty to execute the laws; and whatever our feelings may be for this unhappy man, we are not at liberty to indulge them at the expense of all that is sacred and dear to us. My lord, I said that this was an unhappy man, and I think I can say so, because no man ever had stronger examples before his eyes of the danger he was in; but in place of having the effect it should have had, it has had no effect at all.

My lords, it is always painful to inflict punishment; but, my lords, it is also painful that men will commit crimes; and they must be punished, or society would never be safe.

It is unnecessary for me to add any thing to the opinions already given. I think the punishment suggested by your lordship, is the moderate and proper punishment, and I most heartily concur with your lordship.

Lord *Abercromby*.—My lord, this panel was secretary to the society assuming to themselves the name of the British Convention.—My lord, the object which these societies held forth to the public at first was, a general reform, without specifying the nature or the extent of it; and, my lord, I am disposed to believe, that, at that period, there were many well-disposed persons, in every part of the kingdom, who joined these societies, without any wicked purpose, believing that their sole object was, to render our constitution, excellent as it is, still more perfect, without entertaining the most distant idea of overturning that constitution. My lord, whatever the views of these persons,—of these deluded persons, may be, every thinking man,—every man of common discernment—might see what was the object of the leaders of this society, and that, under the pretext of reforming the constitution, they intended to overthrow it.

My lord, about the beginning of the year 1793, it was well and justly observed, by a person who, I fear, had but too good reason to know the real views of these societies, that if the friends of freedom, as he termed them, could obtain the reform in parliament, which they were then demanding, that, my lord, it would immediately have been followed by the abolition of monarchy, and the total overthrow of our constitution. My lord, after they had been dispersed by the magistrates, they had a meeting at the Cockpit; and, my lord, they ventured to declare to the public at large, and to their fellow citizens, that their sole and only object is, to overturn the present happy constitution, which we now enjoy.—The name which they assumed to themselves, denotes, in the clearest manner, that that was their sole object, for they assumed the name of the British Convention of the Delegates of the People, associated to obtain Universal Suffrage, and Annual Parliaments. It was well observed, yesterday, that universal suffrage, at no period, had ever obtained in any part of the constitution, and never could in any state whatever, except one, which is France, where it certainly exists at present in its fullest extent; and from the effects it has produced there, sure I am, that we have no reason to try the experiment; we have no reason to change the most perfect system that, I believe, ever prevailed in any nation in the world, for that system of despotism under which that nation lies.

My lords, such being the object they had in view, we must all concur in that opinion which your lordships have given;—and, my lords, that being the case, I must also concur with your lordships in regard to the punishment. I think that no man,—I think the panel himself, cannot think that that punishment is too severe;—he must recollect and must know, that his crime is upon the verge of high treason. He was their secretary,—he was one of the secret committee, whose duty it was, in this convention, to name a place for holding a committee of emergency, in the event of an invasion from France.

My lord, after this, no man can think the punishment too severe. My lord, a very little more would have been necessary for the public prosecutor to have charged him with high treason. As it is, I must concur in the opinion which your lordships have given.

Lord Justice Clerk.—My lords, I feel very much for the situation of the panel; but, my lords, we must not allow our feelings to interfere with the discharging of our duty; we must feel for the welfare of the country; and what would have been the situation of the country, if they had executed the scheme that they were meditating? My lords, I could have wished, and it would have made me happy, if he could have given a proper vindication of his conduct, so as to have got an acquittal from the crimes with which he is charged; and I should be very sorry to think, that he suffers for want of the advice of counsel; but, my lords, it gives me a great deal of satisfaction, that after the proof that was heard yesterday, the ingenuity of no counsel, Scotch or English, could have been able to have satisfied an intelligent jury, that this man was innocent of the offence charged against him.

My lords, if he suffers for the want of counsel, he must, I am sure, impute that to himself, for he must know, that a man arraigned at the bar of this court, whether he has money to pay counsel, or whether he has not, he need not go without, for this Court would appoint him one; but it is very odd, that he should in place of applying to counsel here for advice, go to an English counsel, whose place it is not to know the law of Scotland, and who, certainly, had very little business with it.—But he reads something to teach us a little of the English law; but they certainly have no business with Scotch law, and he being to be tried in a court of Scotland, by the laws of Scotland, ought not to have meddled in it; and I am sure however able an English lawyer he may be, he knows nothing of the law of this country, to say that a man cannot be charged as being guilty, actor, or art and part thereof. Nothing but a total ignorance of the criminal law of this country, could have caused such an observation.

My brother took notice of an act made in the reign of James 6th, saying "that if art and part is libelled, the generality of the indictment shall be no exception." Before that act, the prosecutor was not allowed to prove any facts or circumstances but what were set forth in the indictment, and this was attended with very great inconveniences, because in

the course of evidence very often facts and circumstances came out, which were even stronger than those libelled. The legislature of this country saw the inconvenience, and then it was enacted in James 6th, "That the generality of the indictment should be no exception;" so that it is competent to the public prosecutor to prove facts and circumstances not mentioned at all in the libel.

As to the other part of the objection stated by Mr. Skirving, as to the nature of the crime of sedition, I think we should not be deserving of the trust reposed in us, if he had this day to seek into the nature of that crime, when we have within these two months for the same crime, passed sentence of transportation against two persons, Mr. Muir and Mr. Palmer. It is paying a very bad compliment to the Court, after that, that we should now be told, we do not know what we are doing, and that we are yet to learn what sedition is. I thought we were fully apprized of what sedition was, even before the case of Muir, which was followed by that of Palmer. And, I will say, that that opinion that the panel just now read, is absurd in itself, because if acts of violence must be committed to make it sedition, it is impossible that the crime of sedition can be committed at all, because it then ceases to be sedition, it becomes high treason; and if any act of violence had followed these meetings, the consequence would have been thus, that gentleman would have stood there tried for his life, and the forfeiture of his estates, goods, and chattels, would have followed.

My lords, as to the punishment to be inflicted, as I have always considered sedition as the most dangerous crime that can be committed, I think we cannot discharge our duty to the country, unless we inflict for that crime a severe punishment. Mr. Muir was transported for fourteen years, and the only hesitation in that case was, whether it should be limited to fourteen years, or not. I have no inclination to go beyond in this case, but I think it is impossible we can, consistently with the justice of the country, pronounce a less sentence upon this panel, than we did upon Mr. Muir.

My lords, it is an aggravation of his crime, that with the example of Muir and Palmer before him, if he had before that thought his conduct was innocent, and did not deserve a high punishment, he was told by the judges of this supreme court in that case, the nature of the offence; and any prudent man would have taken care to have regulated his conduct accordingly, and given over those rebellious practices; but in place of that, he continues their secretary, and attends the British convention. And, my lords, I do conceive, that if any more trials of this kind should happen in time coming, it is still a farther aggravation, that they have had not only the example of Muir and Palmer, but of this man also, and my opinion is, that we cannot do less than transport him for fourteen years, and therefore I pronounce the same interlocutory that was pronounced upon Muir and Palmer in the same form of words.

THE SENTENCE.

The lord justice clerk, and lords commissioners of justiciary, having considered the foregoing verdict, whereby the assize, all in one voice, find the panel Guilty of the crimes libelled; The said lords, in respect of the said verdict in terms of an act passed in the 25th year of his present majesty, intituled, "An act for the more effectual transportation of felons and other offenders, in that part of Great Britain called Scotland?" ordain and adjudge that the said William Skirving be transported beyond seas, to such place as his majesty, with the advice of his privy council, shall declare and appoint, and that for the space of fourteen years from this date, with certification to him, if, after being so transported, he shall return to and be found at large, within any part of Great Britain, during the said fourteen years, without some lawful cause, and be thereby lawfully convicted, he shall suffer death as in cases of felony, without benefit of clergy by the law of England. And ordains the said William Skirving, to be carried back to the Tolbooth of Edinburgh, therein to be detained till he is delivered over for being so transported, for which this shall be to all concerned, a sufficient warrant,

(Signed) ROBERT M'QUEEN.

Mr. *Skirving*. Conscious of innocence, my lords, and that I am not guilty of the crimes laid to my charge, this sentence can only affect me as the sentence of man.—It is long since I laid aside the fear of man as my rule.—I shall never walk by it.—And, my lords, I could not be ignorant of this sentence, because I knew it long before this;—and I had a letter from London this very morning, informing me that such a sentence was to take place.

Lord Justice Clerk. You heard that from the counsel of London too I suppose.

Mr. *Skirving*. No, I told your lordships that was a voluntary thing, I consulted no counsel.

My lords I know that what has been done these two days will be rejudged;—that is my comfort, and all my hope.

In page 456, line 47, after the word, resolutions, should have been added the following:—but being ordered to stand the last article on the record of the proceedings of the convention, we cannot insert it till the termination of this present session.

597. Proceedings on the Trial of MAURICE MARGAROT, on an Indictment charging him with Seditious Practices. Tried before the High Court of Justiciary at Edinburgh, on the 13th and 14th of January: 34 GEORGE III. A. D. 1794.*

MR. *Margarot*.†—Clerk of the court, where is the lord justice general of Scotland, I do not see him in his place.

Clerk.—I do not know where he is.

Mr. *Margarot*.—I hold that this court is not competent to try me. My lords, I am

* Taken in short hand, by Mr. Ramsey.

† See the preceding and following cases. In the Gazetteer, No. 80, I find the following article relative to this case:

"The London Corresponding Society.

"The London Corresponding Society, united for the purpose of obtaining a thorough parliamentary reform, and thereby a restoration of the British constitution to that degree of purity in which it was settled at the Revolution, having delegated two of their members to represent them in the General Convention then sitting in Edinburgh for the same constitutional purpose, the two said delegates, M. Margarot and J. Gerrald, after having attended their duty in the said Convention, from the 19th November, until the 4th day of the present month of December, both days included; and during which period the General Convention had thought it expedient to assume the title of the British Convention of Delegates of the People associated to obtain universal suffrage and annual parliaments, were, on Thursday the 5th of December, at seven o'clock in the morning, taken out of their beds in the Bull Inn on Leith Walk, by four men, armed with bludgeons, headed by a sheriff's officer, who acquainted them, that he had a warrant (which he refused to show them, although desired to produce it) from the sheriff, for apprehending their persons, and seizing all their papers.

"The Delegates submitted their persons, but protested against the illegality of seizing their papers.—This protest being, however, of no avail against men armed with bludgeons and with warrants, all the papers found in their room, whether belonging to them or others, whether left there accidentally, or designedly brought in, were, for conveniency, thrown promiscuously into a small trunk belonging to M. Margarot, together also with two pocket books of his, containing bills to a considerable amount, memorandums, and private papers, his property. This done, J. Gerrald and M. Margarot again renewed their protest against such usage; and the latter locking the trunk, and putting the key in his pocket, forbade the officer to remove it, as otherways he should have to answer for so gross a violation of the constitutional rights of a British subject.

"The trunk was, however, taken. The delegates were kept confined from that hour until five in the afternoon of the same day, without the least refreshment, and in a room where there was not even a single chair to sit upon. Between five and six o'clock they were sent for to partake of a dinner prepared by an order of the sheriff; and at seven o'clock, M. Margarot being ordered into a private room, he inquired of the sheriff in what manner he meant to proceed; and being answered, by interrogatory, he told the sheriff, that he would not submit to such an unconstitutional practice; that if he had offended against the laws, he would answer to his country, but it should be openly.

"The following questions were then put to him:

"Are you a member of the British Convention?—I do not acknowledge the legality of a private interrogatory.

"From what place or district are you a delegate to the said Convention?—As above.

"Have you made or seconded any motions in the said Convention, and what was the nature of those motions?—As above.

"[A piece of paper with some writing upon it, being shown him, he was asked]

"Did you make said motion in the Convention last night, or upon any other day?—As above.

"The procurator fiscal then desired that the following question might be put to the prisoner:—

"Did you come to Scotland upon any previous invitation of any person or persons in this country?—Before I reply to this question I must inquire of the procurator fiscal, whether it be criminal in Scotland for any person resident here to send an invitation to any person residing in another country; or whether it be criminal in any such person residing elsewhere, to accept an invitation from Scotland, and repair hither?

"To this question the procurator fiscal with visible embarrassment, replied, 'Sir, you 'were brought here not to ask questions, but 'to answer them.' 'Then, Sir, (replied the 'prisoner), I do not acknowledge the legality 'of a private interrogatory.'

"Here the examination ended.

"But the procurator fiscal wanting to proceed to examine the papers contained in

cited before the lord justice general of Scotland, the lord justice clerk, *and* lords commissioners of justiciary. Now we know this is the highest court in Scotland; we know there is no higher office in Scotland than that of lord justice general, and we know, that if it was an unnecessary post, it would not have 2,000*l.* a year salary, annexed to it,* and we know that the indictment would have run before our lord justice general, *or* lord justice clerk, because we know that the public prosecutor will in this case and in every other, trumpet up much the constitution, and as the constitution of Great Britain is founded upon laws, and those laws can only be delivered in words, so the least variation of words in a law, is a total objection to an indictment. My lords, it may be said there is precedent for it, but it is a fundamental principle, that no man is to hold out his own laches. Why is he not here to do his duty?—If this innovation is suffered, perhaps the attendance of the lord justice clerk* will be dispensed with, and the attendance of the other judges; and at last, perhaps, the clerk of the court, or even the macers, will form the high court of justiciary, so that by one deviation and another, even the forms of justice will be done away. And, my lords, we cannot say that there has not been a precedent, where the lord justice general has appeared in his place, though perhaps that was not to the honour of Scotland, where the duke of Argyle sat as lord justice general, for the purpose of trying a man, one James Stewart,† for the murder of a man of the name of Campbell, and the whole jury were Campbells except two, and that was the only instance where the Scotch have enjoyed the privilege of having the lord justice general sit in their court. I deny even the competency of this court to argue upon, or maintain their own competency, because it is the servant pretending to dictate to the master. As well may it be said, we do not want a king, as for the lord justice clerk to say, we do not want a lord justice general.

I have met the laws, and I beg this may be taken under your serious consideration, for what I say this day will not be confined within these walls, it shall spread far and wide, and will undergo a revision in both Houses of Parliament in England. You already know that there is an impeachment hanging over your heads—you know it is shortly promised to be brought forward. And, my lords, I object upon another ground, in the criminality of which you are all implicated, for there is this difference between the lieges and the judges, that a man is always presumed innocent till he is found guilty; but the moment there is the slightest imputation upon a judge, he is presumed to be criminal till his innocence is clearly proved. A judge ought to be like Cæsar's wife, not only spotless, but even unsuspected; that is not the case with you, my lords. We have the promise of many men in England of great respectability who will bring it forward, and you may, though you are now sitting upon that bench, be brought to atone upon your knees, perhaps with your lives, for any infraction of the laws you may be guilty of. My lords, we well know that Cambyses ordered an unjust judge to be flay'd, and the skin of that judge covered the seat of his successor. We also know, that in the reign of Alfred, (and I hold my authority in my hand, and the history of England will furnish it to every

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the trunk, M. Margarot was desired to give up the key. He refused complying with this request; and having asked whether the sheriff acted under the sanction of a general warrant. Being answered in the negative; and well knowing that the laws, even in that case, were still in his favour, and that the papers of a Briton are by these very laws held as sacred as his life, he told the sheriff, that force alone could wrest the key from him.

"The prisoner was then admitted to bail in 2,000 merks.

"The following is nearly the substance of J. Gerrald's examination before sheriff Harry Davidson. He applied for a copy of it, but was refused.

"Are you a member of the British Convention?—You ought to have known that before you sent for me here; that question therefore I conceive to be unnecessary.

"From what district do you come, and what description of persons sent you here?—Decline answering. The persons who sent me here, however, and the district in which I was chosen, will be found mentioned in the London Courier published towards the end of October.

"How long have you been in Edinburgh?—I cannot precisely recollect; but imagine it may be about a month or six weeks. I came soon enough, at all events, to do the business on which I was sent.

"What was that business?—To procure, by peaceable means, annual parliaments and universal suffrage.

"J. Gerrald declined answering any further questions.

"Bailed in the same sum."

* It has been recommended by the select committee on finance recently appointed by the House of Commons, that after the termination of the existing interest in the office of lord justice general of Scotland, the president of the court of session for the time being, should assume the title, rank, and privileges of lord justice general, and that the salary now annexed to this office should be discontinued. See the First Report from the Select Committee on Finance, ordered by the House of Commons to be printed, March 27th 1817.

* As to the office of lord justice clerk, see Vol. 10, p. 989, *note*.

† See his case Vol. 19, p. 1, of this Collection.

one) that in one year, forty-four judges were hanged*—and you will know the fate of Jefferys, who, though the slow hand of the law could not overtake him, was torn in pieces by the people.† I do not mean to say that you are guilty—that remains for a higher decision than mine, at that tribunal where you must soon appear, to answer for those actions which you have committed; but you will remember, that there will be at that day a mixture of guilt and innocence—may the innocence appear predominant;—I do not wish to be one of your accusers on that day.

My lords, the objection that I have stated it is impossible to get over, for that man is remarkably accurate,—I mean the public prosecutor,—and if it was not necessary, he would not have inserted it. I expect no mercy from him, neither shall I expect any thing like mercy from the Court in the situation in which I stand, if what I have heard be true.

My lords, there is another objection also—I need lord justice clerk and lord Henderland's testimonies, as exculpatory evidences: I wanted to bring them upon their oaths to the bar, but though it is the privilege of an Englishman—of a Briton I mean, for I wish the name of Englishman to be annihilated in that of Briton—it is a privilege granted to us by that constitution which is so loudly trumpeted up upon every occasion, that a panel at the bar, shall have the same compulsory method of bringing his witnesses that his prosecutor has, that has been denied me. The man whose business it is to cite witnesses said, he would attend in court, and give his reasons why he did not dare to serve those judges with a citation. It is true, I mentioned only the lord justice clerk to him, and I charged him to tell the lord justice clerk that I wanted his evidence, and I apprehend, that you are not competent to determine upon this objection. I have obeyed the laws. This is not the high court of justiciary, inasmuch as it lacks the centre stone—inasmuch as it lacks the principal officer of the court, and the man who here should represent the king; and consequently the wording of the indictment is loose, and renders it null and void. I have done my duty, and I demand to be discharged from your bar simpliciter.

Lord Justice Clerk.—What do your lordships say to this objection?

Lord *Henderland.*—My lords, the objection as I understand it, is, that the lord justice general does not attend this court, and it is even said, that we are not competent to judge of the force and validity of that objection. Why, my lord, with respect to that, if we are not competent to judge of it, who is to judge of it? It is from the necessity of things that we must judge of it—no other person can judge of it, and therefore I hold that objection to be null and void. With respect to the attendance of the lord justice general—by act of parliament it is declared, that any three of this court shall be a quorum to try any criminal, consequently, though my lord justice general is absent, and even if your lordships and I were absent, any other members of the court, provided there are three, is a legal quorum sufficient for the trial, therefore I am of opinion that the objection should be repelled.

Lord Justice Clerk.—Does any of your lordships think otherwise?—I dare say not. Repel the objection.

[The objection repelled.]

Lord Justice Clerk.—You will attend to the criminal libel that is to be read against you.

Mr. *Margarot.*—Before that is read, my lords, I claim another privilege, which is, that of having my witnesses called over, and if there are any who do not attend, I insist—I demand—I do not ask it as a favour—I demand it—you are on the seat of justice, and take heed how you administer that justice—I demand it as my right, that a caption be granted against the absentees.

Lord *Eskgrove.*—With respect to what Mr. Margarot has said of his witnesses, I dare say your lordships would not hesitate at sending a messenger to serve even your lordships, or any man in the kingdom with a citation. I hope it is not true, that the officer refused to cite your lordships; it was his duty, and he ought to have done it.

Lord Justice Clerk.—Mr. Margarot, stand up and hear the criminal libel read against you.

The Indictment read as follows:

George, &c. Forasmuch as it is humbly meant and complained to us, by our right trusty Robert Dundas, esq. of Arniston, our advocate, for our interest upon Maurice Margarot, merchant in Marybone, London, No. 10, High-street, residing or lately residing, at the Black Bull Inn, head of Leith Walk, barish of St. Cuthbert's and county of Edinburgh: that whereas, by the laws of this, and of every well governed realm, sedition is a crime of an heinous nature, and severely punishable; yet true it is, and of verity, that the said Maurice Margarot has presumed to commit, and is guilty actor, or art and part of said crime: in so far as, the said Maurice Margarot having been named a delegate by an association of seditious people, calling themselves the Corresponding Society of London, did repair to Edinburgh with the wicked and felonious purpose of joining and co-operating with an illegal association of evil disposed and seditious persons, who originally designed themselves, The General Convention of the Friends of the People; but who have of late assumed the designation of, "the British convention of the delegates of the people, as-

† Not quite so. Jefferys died in the Tower of London: see the anecdote concerning him at the end of Tutchin's case, Vol. 14, p. 1199, of this Collection.

* See Vol. 8, p. 196, of this Collection.

"sociated to obtain universal suffrage and "annual parliaments;" and which illegal association, under the names and designations above mentioned, have been in the practice, during the months of October and November last, as well as in the beginning of the present month of December, 1793, of holding various seditious and illegal meetings, at a Masons' lodge, or room in Blackfriars wynd, in the city of Edinburgh, and elsewhere, to the public prosecutor unknown; and which meetings, though held under pretence of procuring a reform in parliament, were evidently of a dangerous and destructive tendency, with a deliberate and determined intention, to disturb the peace of the community, and to subvert the present constitution of the country: with which view they imitated both in the form and tenor of their proceedings, that convention of people, the avowed enemies of this country, who at present usurp the government of France, and with whom Great Britain then was, and still is at war: that the said Maurice Margarot, from his arrival in Edinburgh, did, as a delegate from the said Corresponding Society, in London, constantly attend the illegal meetings of the above-mentioned associations, and did co-operate with them, on different occasions, and act as preses or chairman of their meetings, and did take an active and distinguished part in their deliberations and proceedings; and that while the said Maurice Margarot continued to attend the said illegal meetings, as a delegate, or was officiating in the capacity of president, as above mentioned, various seditious and inflammatory votes and resolutions were past, some of which he moved, others of which he seconded, and to all of which he gave his concurrence and approbation, by voting for passing the same; and which seditious votes and resolutions, as also the inflammatory speeches that were delivered on those occasions, by authority of the said meetings, were inserted in minutes of their procedure, taken at the time, and which afterwards by their order, or under their authority, were published in a newspaper, called the Edinburgh Gazetteer of Tuesday, November 26th, 1793, being No. 78; of Tuesday, December 3d, 1793, being No. 79; and of Tuesday, December 10th, 1793, being No. 80, all of that paper; and were by that means circulated among the lieges; that the said Maurice Margarot did also, when attending in his capacity of delegate at the illegal meetings of the said association, utter and make various seditious and inflammatory speeches, tending to vilify our present happy constitution, and to withdraw therefrom the confidence and attachment of our subjects; and did likewise move resolutions tending to disseminate the seditious and unconstitutional principles, by which these meetings were actuated. And particularly the said Maurice Margarot, at a meeting of the said convention, held on Tuesday 19th of November last, 1793, or on some other day of that month, in a Mason lodge, or room in Black-friars wynd, in the city of Edinburgh, did wickedly and feloniously make the following motion, or one of a similar import; "That previous to publishing an address to the public, a committee be forthwith appointed, to consider the means, and draw up the outlines of a plan of general union and corporation between the two nations, in their constitutional pursuit of a thorough parliamentary reform." Which motion or one of the same tendency, having been approved of, was passed unanimously by the said illegal association; and which motion clearly demonstrated a wish and intention, on the part of the said Maurice Margarot, of propagating the seditious tenets of that association over the whole kingdom, and of exciting our subjects in England, in contempt of legal authority, to adopt the same unconstitutional conduct, which the said Maurice Margarot and his associates had presumed to follow.

And farther, on Monday the 25th of November, 1793, or on some other day of that month, another illegal meeting of the above-named association, held at the aforesaid Mason lodge or room, in Blackfriars wynd, or in some other place, to the public prosecutor unknown; upon a motion being made in the following words, or words of the same import: "That in case the minister, or any other member, bring into the House of Commons a motion for a Convention Bill, as passed in Ireland, for preventing the people from meeting according to their just rights by the revolution, the same motion shall be noticed to the delegates of the respective societies immediately to meet in convention, to assert their rights;" which motion having become the subject of consideration the following day, the said Maurice Margarot did then wickedly and feloniously utter and make the following speech, or one of the like import and tendency: "This is an excellent motion, and the event, which it alludes to, ought to be the *tocsin* to the friends of liberty to assemble. It seems however to be imperfect: it does not mention any place of meeting, neither does it specify the time when the delegates are to assemble; for the word immediately is indefinite, and will not convey the same meaning to persons residing in different parts of the country. By those who live near to the place of meeting it will be understood, that they are to repair there next day. By those at a greater distance, within a few days; and by those still farther off, a week after such information is received. But the committee of regulations have in their report an article of the same purport, which, in my opinion, is preferable to our friend Callender's motion; which, as this motion comes properly under the chapter of regulations, I wish that it were referred to that committee. I therefore move that the report be read, that the convention may judge whether the article I allude to, sufficiently provides for the intention

of the motion now before the convention.

"I believe that the convention will be convinced, that the clause of the report of the committee of regulations, comprehends the spirit and intention of *citizen* Callender's motion, and also extends farther, inasmuch as it provides for a number of cases equally dangerous to liberty, as a convention bill, it will be found also, that this business of calling a meeting of the convention, had better be entrusted to a select committee, appointed for the particular purpose of watching every act which may militate against the rights of the people. And I maintain that the proper place for this motion to appear, is among the regulations of the convention."

And further, on the 28th day of the said month of November, 1793, or upon one or other of the days above mentioned, the said illegal and seditious meeting did, after discussion of the said motion, in the room or Mason lodge, in Blackfriars wynd aforesaid, wickedly and seditiously come to the resolution of the following import and tenor. "That this convention considering the calamitous consequences of any act of the legislature, which may tend to deprive the whole or any part of the people of their undoubted right to meet, either by themselves, or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature; and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our known and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country, and shall continue to assemble and consider of the best means by which we can accomplish a real representation of the people and annual election, until compelled to desist by superior force.

"And we do resolve,

"That the first notice given for the introduction of a convention bill, or any bill of a similar tendency, to that passed in Ireland in the last session of parliament;

"Or any bill for the suspension of the Habeas Corpus act, or the act for preventing wrongous imprisonment, and against undue delays in trials in North Britain;

"Or in case of an invasion,

"Or the admission of any foreign troops whatsoever into Great Britain or Ireland—all or any of these calamitous circumstances shall be a signal to the different delegates, to repair to such place as the secret committee of this convention shall appoint, and the first seven members shall have power to declare the sittings permanent, and twenty-one shall constitute a convention, and proceed to business.

"The convention doth therefore resolve, that each delegate immediately upon his return home do convene his constituents, and explain to them the necessity of electing a delegate or delegates, and of establishing a fund without delay against any of these emergencies for his or their expense, and that they do instruct the said delegate or delegates to hold themselves ready, to depart at one hour's warning."

And further, the said Maurice Margarot did at the said illegal meeting, after the aforesaid resolution was so passed, wickedly, and feloniously make a motion in the following words, or in words of a similar import and tendency: "That a secret committee of three, and the secretary be appointed to determine the place where such convention of emergency shall meet: that such place shall remain a secret with them, and with the secretary of this convention; and that each delegate shall at the breaking up of the present session, be intrusted with a sealed letter, containing the name of the place of meeting. This letter shall be delivered unopened to his constituents, the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state until the period shall arrive at which it shall be deemed necessary for the delegate to set off—which motion was unanimously approved of."

And further, the said Maurice Margarot did, on Wednesday the 4th of December, 1793, or on one or other of the days of that month, or November preceding, in another illegal meeting of the above-named association, held at the aforesaid Mason Lodge, or room in Blackfriar's wynd, or some other place to the public prosecutor unknown, wickedly and feloniously utter and make the following speech, or one of a similar import and tendency:

"Your committee of regulations have not been able to bring forward the remainder of their report this evening, they have not however been idle, they have been employed in another manner in your service. It has been observed that we admit spies under the name of strangers. I say they are welcome; and if the men, by whom they are employed, were to come here, they should be welcome also: for we have no secrets which we dare not avow. But the intelligence which I have to communicate, will show that those who are not friendly to reform, and who have an interest in supporting the existing abuses, are using every endeavour to put a stop to our meetings. If they abide by law we are safe; for they cannot deny that we are met for a legal and constitutional purpose; but as the people in power may take measures against us not warranted by law, we ought to be prepared. I have in my hand the outlines of a motion which I would wish to propose in a fuller house. However I shall in the mean time observe, that I am informed there are many men who are desirous of dispersing us by force, we ought therefore to prepare against such dispersion. We have already appointed a secret committee, for fixing a place of meeting on certain emergencies; and we ought to

be equally well provided against the present case; for if we shall happen to be dispersed to-night, how or where are we to rally again? To do this your committee suggests a resolution to the following effect; but which I shall leave to be drawn up by the council of the table: that the moment of any illegal dispersion of the present convention, shall be considered as a summons to the delegates to repair to the place of meeting, appointed for the convention of emergency by the secret committee; and that the secret committee is instructed to proceed without delay to fix the place of meeting. I hope that what has been already said, will convince the convention that your committee of regulations, though they have not been able to bring forward their report, have not neglected their duty; and it will convince our enemies that we do not altogether neglect them, they will see that we proceed with regularity, and that we have an eye upon them while they have spies upon us. I therefore move for leave to bring in this motion—which motion afterwards passed unanimously."—The said Maurice Margarot, after moving the said resolution, not only gave his assent to pass the same, but allowed himself to be named one of the four members of which said secret committee was composed, and agreed to act in that capacity. And further, on Friday, December 6th, 1793, or some other day of that month, the said illegal association having again assembled in a room or workshop belonging to, or possessed by John Laing, wright, situated in lady Lawson's yard, south side of Cross Causeway, in the parish of St. Cuthbert and Sheriffdom of Edinburgh. The sheriff substitute of Edinburgh, with others his assistants, having, in the discharge of his duty, repaired to the said room or workshop, with a view to disperse said illegal association, the said Maurice Margarot, with others his associates, did then and there resist the said sheriff-substitute, and did peremptorily refuse to disperse until forced so to do: that on this occasion the said Maurice Margarot was called to the chair, and acted as preses or chairman of the said illegal meeting, after the appearance of the sheriff substitute, and in open contempt and defiance of all legal authority, vindicated the proceedings of the meeting, and peremptorily refused to leave the chair unless compulsion was used: in consequence of which the sheriff-substitute was under the necessity of taking him by the arm and pulling him out of the chair, and of using force in dispersing the rest of his associates: that this conduct of the said Maurice Margarot was highly aggravated by this circumstance: that the said illegal association had been the very evening before dispersed by the civil magistrate. And the said Maurice Margarot having been apprehended and brought before Harry Davidson, esq. sheriff substitute of the shire of Edinburgh, on the 5th of December, 1793, did in his presence emit a declaration of that date, which is signed by the said sheriff-substitute, the said Maurice Margarot having declined to sign the same; and when the said Maurice Margarot had been so apprehended, sundry papers having been found in his possession, or claimed by him, the same were afterwards inspected in his presence, by authority of the sheriff of Edinburgh, and two several lists or inventories of those papers were made up, one of which, containing ten articles, is subscribed by William Scott, procurator fiscal of the county of Edinburgh, and by Joseph Gerrald, of Hart-street, Bloomsbury-square, London; and the other, consisting of nine articles, is subscribed by the said William Scott, and by the sheriff-substitute of Edinburgh, as the said Maurice Margarot refused to sign the same. Which inventories, together with the whole articles thereof, except No. 1, of the first inventory; as also the foresaid declaration emitted by him before the sheriff-substitute of Edinburgh; together with a paper signed by the said Maurice Margarot, and by John Wardlaw, quoted on the back, "Motion of M. Margarot," and signed by the said sheriff-substitute, as relative to the foresaid declaration; as also the scroll or draught of the minutes of the said general convention, from the 29th of October, to the 4th of December, 1793, consisting of 95 pages; as also Nos. 78, 79, and 80 of the Edinburgh Gazetteer abovementioned, being all to be used in evidence against the said Maurice Margarot, will for that purpose, in due time, be lodged in the hands of the clerk of the high-court of justiciary, before which he is to be tried, that he may have an opportunity of seeing the same. At least times and places above-mentioned, the said acts of sedition were committed, and the said Maurice Margarot is guilty, actor, or art and part thereof. All which, or part thereof, being found proven by the verdict of an assize before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary, to be holden by them within the criminal court-house at Edinburgh, upon the 9th day of January next to come, the said Maurice Margarot, above-complained upon, ought to be punished with the pains of law, to deter others from committing the like crimes in all times coming. Our will is therefore, &c.

List of Witnesses.

1 Harry Davidson, esq. sheriff-substitute of the county of Edinburgh.
2 William Scott, procurator-fiscal of the said county of Edinburgh.
3 James Williamson, clerk to the said William Scott.
4 Archibald Welch, clerk to the same William Scott.
5 Joseph Mack, writer in Edinburgh.
6 James Lyon, indweller in Edinburgh.
7 John M'Donald, indweller in Edinburgh.
8 Neil M'Glashan, indweller in Edinburgh.

9 William Ross, clerk in the Gazetteer-office, Edinburgh.
10 George Ross, clerk in the Gazetteer-office, Edinburgh.
11 Alexander Aitcheson, student of medicine, residing in Canongate of Edinburgh.
12 John Clark, mason, in Edinburgh.
13 Alexander Bell, tobacconist in Canongate of Edinburgh.
14 Andrew Newton, formerly tobacconist in Dunse, now residing in St. Patrick's-square, Edinburgh.
15 John Gourlay, watchmaker, in Edinburgh.
16 Alexander Reid, joiner and cabinet-maker, residing in Edinburgh.
17 David Downie, goldsmith, in Edinburgh.
18 Thomas Cockburn, merchant, Lawnmarket, Edinburgh.
19 John Wardlaw, writer, in Edinburgh.
20 Samuel Paterson, merchant, in Luckenbooths of Edinburgh.
21 John Laing, wright, in Nicolson-street, Edinburgh.
22 The right hon. Thomas Elder, lord provost of the city of Edinburgh.
23 Neil M'Vicar, esq. one of the magistrates of Edinburgh.
24 James Laing, one of the city depute clerks of Edinburgh.
25 James Burnet, grocer, in Edinburgh, preses of the society of constables.
26 Alexander Frazer, grocer, one of the constables of Edinburgh.

J. ANSTRUTHER, A. D.

LIST OF ASSIZE.

John Grindlay, rectifier of spirits, Edinburgh.
James Gordon, brewer there.
John Howden, sadler there.
Thomas Hotchkis, brewer there.
5 Samuel Gilmour, ropemaker there.
James Clark, farrier there.
Walter Smeaton, painter there.
James Mill, tanner there.
James Clarkson, baker there.
10 William Murray, merchant there.
William Scott, plumber there.
Robert Norie, painter there.
William Smith, stabler there.
Robert Armstrong, plumber there.
15 Charles Robertson, printer there.
Andrew Bruce, merchant there.
Thomas Cleghorn, coachmaker there.
Henry Farquharson, carver there.
John Balfour, merchant there.
20 John Saunders, shoemaker there.
John Baxter, glazier there.
James Dickson, seedsman there.
John Wilson, coachmaker there.
Robert Young, upholsterer there.
25 William Ainslie, saddler there.
John Scott, watchmaker in Edinburgh.
William Fraser, tinsmith there.
Gilbert Meason, merchant there.
Alexander Weir, painter there.
30 Henry Murray, perfumer there.
William Marshall, plumber there.
John Brough, wright there.
David Stewart, merchant there.
John Young, architect there.
35 William Pirnie, architect there.
James Bryce, painter there.
John Hay, banker there.
Samuel Anderson, banker there.
James M'Leish, bookseller there.
40 Robert Burns, architect there.
Macduff Hart, shoemaker there.
James Fowler, stationer there.
John White, merchant there.
Adam Dalmahoy, merchant there.
45 William M'Lean, merchant there.

ROBERT M'QUEEN.
ALEXANDER MURRAY.
DAVID RAE.

Lord Justice Clerk.—What do you say to this? Are you guilty of the charges contained in it, or not guilty?

Mr. *Margarot.*—My Lord, guilt does not stand at your bar at present.

Lord Justice Clerk.—Are you guilty or not guilty?—You must answer that question.

Mr. *Margarot.*—I am not guilty! but I do not understand what is done with the objection I have already made.

Lord Justice Clerk.—It is repelled.

Mr. *Margarot.*—Oh! it is repelled, is it; according to custom? then I must make an open declaration of my intention, to enter a protest against the proceedings of this Court.

Lord Justice Clerk.—Have you any thing to offer as to the relevancy of the libel?

Mr. *Margarot.*—With regard to the libel, if any exactness is necessary in a criminal libel, it certainly is not relevant, and here is one thing, that alone is sufficient to quash it. But, my lord, I desired that my witnesses might be called over, in order that I might have a fair and free trial, and that if any of them did not attend, I might have a caption granted by the Court; and that is an objection which is not to be done away so easily. I have not heard the answer of the court to that.

Lord Justice Clerk.—Have you any arguments to offer as to the relevancy of the indictment? if you have, you must mention them now.

Mr. *Margarot.*—If your lordships will give me leave to state the objection about the witnesses afterwards, then I say, this libel states, that by the laws of this realm, sedition is a crime of a heinous nature. I beseech your lordship, to point out the law which makes sedition a crime, and also, that which shows the punishment that is due to it. I understand some people think sedition so well understood, as not to need explanation. I differ from them: I say it is not merely the authority of a judge that is sufficient; he must lay his finger upon the law-book, and point it out to the subjects that they may know where to find it when they are not before the judge. Is there any law in the British constitution, which points out sedition, and affixes the punishment to it?

My lords, in page three of the indictment are these words, which I understand to be taken from the Gazetteer. "This is an excellent motion, and the event which it alludes to, ought to be the tocsin to the friends of liberty to assemble." In the Gazetteer it is, "the friends to liberty"—here it is "the friends of liberty" Therefore, that is a flaw in the indictment, which quashes it at once.

My lords, if you go according to justice, these are valid objections; but if you think proper to repel them—if it is only to state an objection, and as soon as stated it is repelled, you may do as you think fit; but, if I have not impartial justice done me, I will sit down, not make any defence, but desire you to disband the jury and pass sentence.

Lord Justice Clerk.—Have you any thing farther to say as to the relevancy?

Mr. *Margarot.*—It is irrelevant in toto. Then my lords, again, at the conclusion of this libel, I come back with my first objection—I see it both at the beginning and the end, and it is not a mere matter of form—no act of parliament can do it away, or if an act of parliament can do it away, why is not the letter, as well as the spirit of the act maintained? It says here, all which, or part thereof, being found proven by the verdict of an assize before our lord justice general, lord justice clerk, *and* lords commissioners of justiciary. It says so at the beginning—it says so at the end. My lords, this is an inaccuracy that cannot be overlooked—it must not be overlooked; and, as you thought proper to repel it in the first instance, I urge it again in the second, it is a flaw in the indictment. There are three flaws, which I think sufficient to quash the indictment entirely.

Lord Justice Clerk.—Have you any more objections to make?

Mr. *Margarot.*—No, my lords; three are as good as three thousand.

Mr. *Solicitor-General.*—My lords, in answer to what has fallen from the panel, his objections are so extravagant as hardly to merit an answer. The only appearance of any thing like a legal objection is this: the gentleman says he is accused of sedition, and calls upon us to point out where sedition is made a crime, and by what law, and what is the punishment affixed to it. My answer to that is, that sedition was made a crime not by any statute, but by the common law of Scotland; and if the gentleman wishes for authority, I refer him to the book called "Regiam Majestatem," where sedition is expressly stated to be a crime, and I would tell him, that it is there declared to be punishable as treason. That is in the oldest book that we have upon the law of Scotland. Since that, sedition has not been punished as treason, but remained upon the footing of the common law, punishable by what is called an arbitrary punishment. As to a definition of sedition, your lordship knows there are many crimes of so complex and so vague a nature, that it is hardly possible to give a general definition to comprehend them all. If I am called upon to give a definition of high treason, I do not know any that I could give, except by enumerating all the different cases of treason; or, suppose I was called upon to give a definition of falsehood or forgery, there are twenty different kinds of it; no definition can comprehend the whole. So also, I imagine, it stands with regard to sedition. At the same time, if a definition is wanted of the crime charged against that gentleman, I will read him Mr. Erskine's definition of it in his first institute: he divides it into two parts, real sedition and verbal sedition; he says, real sedition is generally committed by convocating together a considerable number of people without lawful authority, under pretence of redressing grievances, to the destroying of the public peace. Then he says, general sedition is inferred from the convocation of a number of people without lawful authority, tending to disturb the peace of the community. Is not this the very crime charged against this gentleman? if there was any lawful authority, the gentleman will tell us what it is. Can there be a doubt, that if the facts stated in this indictment be true, they not only tended to disturb the peace of the country, but to subvert the constitution of Great Britain. Therefore, taking the charge as it stands, there cannot be a doubt with any one of your lordships, that it does amount to a charge of sedition, and that sedition is a crime punishable by the law of this country. If there is any other country in the world, where sedition is not made a crime by the common law, I wish these gentlemen, next time they hold British conventions, would meet in that country, for in Scotland, I will assure them, there is a law to punish them.

Mr. *Margarot.*—My lords, I hold in my hand a definition of Mr. Erskine's a little differing from what the gentleman has read; he says, "it consists in raising commotions or disturbances in the state; it is either verbal or real. Verbal sedition or leasing making, is inferred from the uttering of words, tending to create discord between the king and his people;" and I think it is that gentleman who is guilty of sedition, inasmuch as he seeks to alienate the hearts of the subjects from their sovereign. He says, "it was formerly punished by death and the forfeiture of goods, but now either by imprisonment, fine, or banishment, at the discretion of the judge." Now it seems to me, that that cannot be the sedition which this gentleman means, for, if I understand rightly, the sedition I am charged with is something like that of Messrs. Muir, Palmer, and Skirving.* Now if their sedition had been the sedition that is meant here, they would have been

* See these cases in this volume, *antè*.

punished by banishment, and not by transportation; and therefore there must be some trifling mistake in that, my lords. Now it says here, "for preventing riots and tumults it is enacted, that if any persons to the number of twelve shall assemble, and being required by a magistrate or constable to disperse, shall nevertheless continue together for an hour after such command, the persons disobeying shall suffer death." Therefore that cannot be the sedition that I am charged with, for the indictment only pretends to know, what I am sure the Almighty never commissioned the lord advocate to inquire into, namely, our secret intentions. I did not know before that there was an inquisition in Scotland, and that he was grand inquisitor; for certainly, otherwise, the minds of the people are only to be gathered from their behaviour.

My lords, these meetings, I will maintain, were legal in the strictest sense of the word; for the claim of rights entitles the people to petition parliament; and it is impossible they could petition parliament without meeting. The general will cannot be collected as you collect taxes from door to door. Good God! what is become of the constitution that you trumpet up so much, if you give us the name and take away the essence? if the people are not to meet to examine their rights, and proceed upon their rights.

My lords, there is not one so barefaced, as to pretend to deny our right to petition or address the king. The lord advocate himself has acknowledged that it is our right. He himself is a reformer, and has held seditious meetings as well as we; but then indeed he brings forward a curious reason: when the lord advocate is out of place, reform is proper; when in place, it is highly improper; and that is the doctrine of Mr. Pitt. Because we are poor, it is sedition in us; but when your county meetings are held, it is no longer sedition, but it is a thing that is authorized. As long as they thought we were not sufficiently formidable, and that there was no danger of opening the eyes of the people, so long did justice nod; and she only awoke when every man, hearing so much talk of the constitution, began to examine what that constitution was. And, to be sure, it is a curious fiction in law (and you have a great many) by which our happy constitution has wisely guarded the prosecutor for the crown; by which means the subject may at any time be oppressed and persecuted by the officer of the crown, and he can obtain no damages, no redress whatever. Happy if he gets off, happy if his sentence does not come out of the pocket of a minister of state. My lords, our transactions have been legal. The illegal actions have been entirely on the part of our prosecutors. We have experienced the fate of general warrants, we have experienced the fate of a state inquisition. Good God! has not a man, living under the British constitution, a right to examine that constitution, and to say, I am told, that it is the finest institution in the world, and yet I feel my pocket emptied daily with taxes: I feel my liberties taken away one after another; and yet I must not meet with my neighbours to the number of twelve, to discuss those injuries that I daily feel, and to inquire after the means of obtaining redress, but immediately comes a crown lawyer, claps the word sedition upon it, and I am punished. Then another man is charged with sedition—My case is brought forward as a precedent, and therefore he must be punished in the same way. I say, my lord, if every article in this libel is proved, it redounds more to my honour than any thing else: it shows me the friend of my species; it shows me the friend of my country; it shows that I have done my duty as a good citizen; that I have endeavoured to procure that for every one of my fellow-subjects that it is our right to enjoy; that I do not wish to enjoy a single thing alone, neither place nor pension; that I do not wish to enjoy any thing exclusively, but I seek a restitution of our rights, a renovation of our constitution, as it is said here, by universal suffrage and annual parliaments.

My lords, perhaps your memories may fail you, for it is some time back when Mr. Pitt, at the Thatched House tavern, being a young man, making his debut in parliament, a young patriot making his entrée into the world, insisted upon a reform. It was then highly constitutional. My lords, I have in my hand a resolution entered into at the Thatched House tavern, on the 16th of May, 1782: "At a numerous and respectable meeting of members of parliament, friendly to a constitutional reformation, and of members of several committees of counties and cities." Here, gentlemen, you see delegates, here you see a convention, though a convention is nothing new in Scotland; because you have had the borough reform convention, and the lord advocate is himself upon that list. My lords, at the Thatched House tavern were present the duke of Richmond, lord Surrey, lord Mahon, the lord mayor. Here you see amongst them the first municipal officer in England, the lord mayor, sir Watkin Lewes, Mr. Duncomb, sir Cecil Wray, Mr. Brand Hollis, Mr. Withers, the hon. William Pitt, whom I mean to adduce as an exculpatory evidence, if even the forms of justice are allowed me—the rev. Mr. Wyvil, major Cartwright,* Mr. John Horne Tooke,† alderman Wilkes,‡ Dr. Jebb, Mr.

* See the case of Daniel Holt for a libel, *antè* Vol. 22, p. 1198.

† See his trial for a seditious libel, *antè* Vol. 20, p. 651, of this Collection, and his trial for high treason, A. D. 1794, *post*.

‡ See his cases in Vol. 19, of this Collection.

Churchill, Mr. Frost,* &c. &c. all men of learning, who well knew what the constitution of this country is, and what it ought to be—men who required not to be told what was sedition and what not—men who would not have risked themselves if they had not known that they were upon constitutional ground, and they resolve, "That the motion of the hon. William Pitt, on the 7th instant, for the appointment of a committee of the House of Commons, to inquire into the state of the representation of the people of Great Britain, and to report the same to the House; and also what steps it might be necessary to take, having been defeated by a motion for the order of the day"—which is something similar to your repelling an objection of the panel, as soon as it is stated—"having been defeated by a motion for the order of the day, it is become indispensably necessary that application should be made to parliament, by petitions from the collective body of the people in their respective districts." They were not to pour into the House eight millions of petitions, but as many petitions from as many districts as they could collect together, "requesting a substantial reformation of the Commons House of Parliament.

"Resolved unanimously, That this meeting, considering that a general application, by the collective body of the people, to the House of Commons, cannot be made before the close of the present session, is of opinion that the sense of the people should be taken." And how is the sense of the people to be taken. I would ask the learned gentlemen of the law, if they are not convened?—Who is to take the sense of the people, if it is to be done by going round from man to man, and if twelve form a seditious meeting, it will come, by-and-by, perhaps to two or three, and it will be dangerous for one neighbour to speak to another in the street, or any where else indeed, "that the sense of the people should be taken at such times as may be convenient during this summer, in order to lay their several petitions before parliament, early in the next session, with their proposals for a parliamentary reformation,"—Observe this, men of Scotland!—Observe this, Britons! "without which, neither the liberty of the nation can be preserved, nor the permanence of a wise and virtuous administration can be secure," and I appeal to you all whether there is not truth and sound doctrine in it, "may receive that ample and mature discussion which so momentous a question demands."

My lords, it seems to have been in the year 1782 a very laudable and a very constitutional thing to assemble, to meet to consider of the grievances, and to plan a method by which they were to be redressed. In the year 1794, when the very man who planned, who first suggested this, who encouraged the people thereto, under his reign, I may call it, for he is the guide of the helm—the guide in the cabinet, while he is in absolute power; that shall be considered as sedition which he himself first set on foot, in order to procure himself that birth; and, now he has got it, he has altered his sentiments—How ridiculous for a crown lawyer to attempt to impose upon a court of justice; or for any man to support such imposition, that what was constitutional in 1782, should be criminal in 1794.—Fellow-citizens, and I fear not to call you by that name—we are fellow-citizens of one society. By the word citizen I mean a free man, a man enjoying all the rights and all the privileges, and paying his quota towards all the expenses of society; I say it is an insolent attempt upon your understandings, to endeavour to persuade you that that which was constitutional, that that which was right, that that which was justifiable in 1782 should be criminal in 1794. It is true that an English jury has sent to prison a man for only reprinting those resolutions. Holt, I think his name is, the printer of the Newark Journal, for reprinting in his paper, which pays a daily tax to government, that which the person to whom he pays the tax was the author of.* Thus you see how crown lawyers pervert the constitution. With high sounding words they disguise the most innocent facts; they sport with the lives, and with that which ought to be infinitely more dear than their lives—with the liberties of his majesty's subjects. Men who feel wrongs cannot feel them without some degree of acrimony, and when those wrongs are repeated, this acrimony must increase; and these wrongs are done them in the king's name; but it is not the king, it is his servants who make use of his name; his seditious servants who separate the king from his people. My lords, I know my doom. I am a willing and an already devoted victim. I have made objections, those objections have been repelled. I shall insist presently on the calling over of my witnesses. I shall then demand a caption against such as do not appear. If my just, my legal, my constitutional demands are repelled, I will sit down; I will beg the gentlemen of the jury not to give themselves any farther trouble; I will protest against the proceedings of the Court, and beg of them to pass to sentence; which I know it will be no difficult matter for them to do.

Lord *Henderland*.—My lords, we are called upon to decide upon the relevancy of this indictment, which charges in the major proposition, that the crime of sedition, in this and

* See his trial for seditious words, Vol. 22, p. 471 of this Collection.

* Not so; see the note to the case of Daniel Holt, Vol. 22, p. 1198 of this Collection.

every other well governed realm, is a crime of a heinous nature, and severely punishable. And, my lord, the first part of it (to which it might be sufficient to confine myself at present) charges that this society, calling themselves the British Convention of Delegates of the People, met under the pretence of reform, that it was of a dangerous and destructive tendency, and was with the deliberate and determined intention to disturb the peace of the community, and to subvert the present constitution of the country: and that this gentleman, Maurice Margarot, did take an active and distinguishing part in their deliberations; and consequently, that he took an active and distinguishing part in the deliberations of a society, met with a determined purpose to overturn the constitution; that is the charge, true or false it is not our province at present to inquire, that must be left to the jury. The criminality does, to be sure, consist in, that they met with a determined purpose to overturn the constitution; and the jury, when they come to decide upon it, must take into their view the several things charged in this indictment, relative to this meeting. As to the form that they assumed, how far that was necessary to obtain a reform in parliament, it is the province of the jury to inquire; and under all the circumstances of the case, to lay their hands upon their heart, and upon their great oaths to say what was the purpose of that meeting, according to the facts before them. My lord, if that is made out, which is the charge, and in considering the relevancy I am bound to hold the charge as proved, there cannot be a doubt that it amounts to sedition. I say it approaches to high treason; and I find in the cases tried in England, in 1745, as appears from Judge Foster's report, the charges laid against the prisoners were very little different from those contained in the present indictment.* It ran in these terms: "Also devising and as much as in them lay, most wickedly and traitorously intending to change and subvert the rule and government of this kingdom, duly and happily established under our present sovereign lord the king, and also to depose and deprive our said present sovereign lord the king of his title," and so on. Now, my lord, the charge is, that the purpose of this meeting was to subvert the constitution; and if it was, where can the doubt be, that it does amount to sedition? My lord, the gentleman requires a definition of sedition. My lord, I leave it to the sense of every man who hears me, if an intention to subvert the constitution of a country is not sedition. In matters of criminal law you must go by the understanding and the sense of mankind, and in this instance particularly the jury are to determine upon the law as well as the fact.

My lord, with respect to sedition, it is of various kinds; no doubt its general tendency is to resist and undermine, or attempting to resist and undermine the constitution of the country, and subvert the supreme power of the state. It may either be of a public or a private nature. When of a private nature, it is directed against matters of a private life, it may be in direct opposition to acts of parliament, with respect to inclosures, division of commonalties, turnpikes, and so on. But of a public nature is the crime which is charged against this gentleman: an intention to subvert the constitution. My lord, sedition may be attended with tumult or without: with rising in arms, or without rising in arms. My lord, sedition of a public kind, is as various as the ingenuity of wickedness can suggest. It may be committed by words, by writing, by painting, by medals, by allegories, by actions, by false insinuation, by false argument, by tumult and insurrection, by mobs, by cabals, by open and secret meetings; by conspiracies and by conventions. If the jury are satisfied in their minds that the intention of this is to overturn the constitution, it is sedition. My lord, it was said that there was no law against this. As to that, my lord, every well-regulated government must make it sedition; because otherwise society could not exist. It always has been, and must remain a common law crime, and must be punishable by common law.

My lord, having said so much, I think there can be no doubt that the libel is relevant. The panel is at liberty to state what he pleases in his defence. To insist it was for a partial reform by legal means, and that nothing else was meant by this extraordinary guise that this convention took upon themselves to assume, the jury will upon the whole judge whether his defence or whether the charge is relevant. In the mean time it is my humble opinion that it is relevant.

Lord *Eskgrove*.—My lord, as to the crime of sedition, I cannot read the indictment, nor I think any body else, and say that if this man was concerned in holding these meetings for the purpose of disturbing the peace of the community, and subverting the constitution of the country, that that is not the crime of sedition. My lord, it is not the province of such men as these, to take upon themselves the amendment of the government. The intention of their meeting, they say, was to obtain universal suffrage; or in other words, to establish that every man living in this country is to have a vote to choose a representative in parliament; a thing that never did obtain, and that does not now obtain, and never can obtain in this country. But, my lord, it seems that if an act should take place for the purpose of suppressing such illegal meetings, that this is to be their tocsin, and their alarm-bell for the purpose of meeting, when, where, or how, is to be kept a deep secret—it is not to be divulged even among themselves; but it was to be confined

* See the indictment in the case of Francis Townley, Vol. 18, p. 333 of this Collection.

to this gentleman, and two or three more, who were to call a convention of emergency, and they were to continue to assemble, and not to obey such act, if it should pass. My lord, if the charges in this indictment are proved, it is impossible to deny my assent, that they do infer the crime of sedition. I am of opinion that this libel is relevantly laid. I shall be exceedingly happy if this gentleman is found innocent; but that lies with the jury, and not with us.

Lord *Swinton.*—My lord, the question that is now under our consideration is, whether this libel is relevant to infer the pains of law. And, my lord, it has been so fully discussed, not only at this time, but upon the occasion of a very late trial, that it is perfectly unnecessary to go over the ground again that has been already gone over. But, my lord, in this case the indictment states, that a motion was made upon which the panel says, "this is an excellent motion. The event which it alludes to, ought to be the tocsin for the friends of liberty to assemble." My lord, this is a very ill-chosen word. What is this tocsin? It is an instrument made use of by the people in France to assemble. It is borrowed from a place from which I would wish to borrow very little. For what purpose are they to assemble? They say to assert their rights. By what means?—Can any man be at a loss to make the answer?—By violence and outrage, and no other interpretation can be given to it. My lord, afterwards a proposal is made for a sealed letter to be given to the delegates, which was not to be opened till a certain period: like an order that is sometimes given to ships when they sail, that they are not to open their instructions till they come to a certain latitude; and the meaning is, that those instructions shall not be known, for fear they should be prevented. There can be no other reason; and yet they afterwards say, we make no secrets of any thing. Then there is a resolution, that this convention, considering the calamitous consequence of any act of the legislature, which may tend to deprive the people of their undoubted right to meet, declare before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country. Is not this declaring that they will oppose the legislature itself? My lord, it does not require any proof of its being sedition. Then, my lord, among other cases of emergency, in which they were to meet, it is mentioned, "or in case of an invasion." My lord, for what purpose were they to meet privately, in case of an invasion? The legislature, the executive part of government is to look after that. Every man must feel what they meant: that they should assemble the delegates altogether at a particular time, and all at one time they should meet, in case of an invasion. My lord, I gave my sentiments very fully this day se'nnight upon the same question, and I have not altered them, but feel them stronger and stronger. I am sorry to see so many examples brought before us, and I hope there will be but few more; I am of opinion that the libel is relevant.

Lord *Dunsinnan.*—My lord, the only question at present for our consideration is, whether the libel is relevant, and is laid properly. My lord, the major proposition states the crime of sedition: the minor proposition specifies a variety of circumstances, which, if they come up to the crime of sedition, the libel is relevant; and, my lord, I have but one doubt upon this subject; and that is, whether in some of these particulars it is any thing short of the crime of high treason; but I think that it amounts to sedition, there can be no doubt; and I think that the ordinary interlocutory ought to be pronounced.

Lord *Abercrombie.*—My lord, in this case, as to the objections to the relevancy it is the province of the jury to inquire into the facts charged; and if those facts are brought home to this panel,—particularly the resolutions,—if they are brought home to him, I think the necessary conclusion is, that he is guilty of the highest species of sedition that can possibly be committed. I am of opinion that the libel ought to be found relevant.

Lord Justice Clerk.—My lords, I think it very unnecessary to add any thing to what your lordships have said; but I think any man who knows any thing of the law of Scotland; or that has the least understanding, must think that the one half of what is charged here, if true, does amount to sedition; and therefore I have no doubt in pronouncing the ordinary interlocutory, that the libel if found proven to the knowledge of an assize is relevant to infer the pains of law which the jury will attend, is only an arbitrary punishment, and allowing the panel to prove all facts and circumstances that may tend to exculpate or alleviate his guilt.

Mr. *Margarot.*—My lords, I may now put in my former claim, of having my witnesses called over.

Lord Justice Clerk.—Surely both prosecutor and panel ought to see that their witnesses are all here. Let the macer go now and see if they are here.

Mr. *Margarot.* — And likewise that the Court and the people at large may be informed the reason why I have not the privilege of having you as an exculpatory evidence, in consequence of the fear of the messenger to deliver such a summons to you; that is a thing proper to be known.

Lord Justice Clerk.—If you have any thing that it is necessary for me to prove, you shall have the benefit of my testimony, and you shall not want it neither.

Lord *Abercrombie.*—I am sure if the messenger has refused to cite your lordship, he has behaved most improperly.

Mr. *Margarot.* I think his name is Hot-

cheson; he said he would be ready in court to give a reason why he refused to do it.

[The interlocutory of the Court read.]

Mr. *Margarot*. There is likewise another thing: you did not take notice of the two objections to the wording of the indictment, which are material flaws. Your lordships have not said a word to that.

Lord Justice Clerk.—The Court have considered all you have said, and they are of opinion, upon the whole, that the libel is relevant.

Mr. *Margarot*.—Here is the list of my witnesses, my lord.

[The messenger was called, but did not appear.]

Mr. *Margarot*.—You will be informed, that some of my witnesses live in England, that I have had the exculpatory letters served there, with what is called a subpœna in England, and the affidavit at the back of the exculpatory letters, now in the hand of the clerk of the court, shows that they have been cited in a legal manner, and therefore, as they are material witnesses, I wish the list of them to be called over.

[The list being called over, the following persons were absent.]

Duke of Richmond	John M'Intire
Henry Dundas*	John Wright
William Pitt	

Lord Justice Clerk.—As to the three that reside in England, this Court cannot go beyond their jurisdiction: they cannot compel any witness living in England to appear here; and therefore a caption against witnesses residing in England is a thing altogether incompetent and unheard of.

Mr. *Margarot*. Your lordship's objection is not valid, as will appear to yourself, upon reflection, inasmuch as if you are not competent to give a second citation, you were not competent to the first. On the contrary, it appears that the letters of exculpation found no difficulty in being backed by a judge in England, and the subpœna was served upon them according to the laws of England; and therefore, by a second diligence, they will be pursued in the same manner; and that will be backed by a judge, and the same compulsion will be exercised upon them in England as would be in Scotland, if they resided here.—And, my lord, I will not permit this to be passed over easily, they are very material evidences—they are men of high station in the state—they are men of great responsibility—they are men whose actions are public, and the questions that I mean to put to them are of a very important nature.—There is again another thing—it seems you overlook some things and pry very closely into others—it seems you are not competent to enforce the attendance of a witness from England, but it appears, by the libel, that you are competent to try offences committed in England. My lord, mete with an equal measure—let my objection be attended to in a proper manner.—It is a legal objection founded in justice, and justice cannot deny it.—Grant me a caption for my absent witnesses. I demand it.

Lord *Henderland*.—My lords, if witnesses resided in Scotland within our jurisdiction, and did not attend, a caption might be granted; but my doubt is, whether it is competent to the Court to grant a second diligence, because in this case it must be altogether nugatory.

Lord *Eskgrove*. My lords,—I do not know an instance existing, either in the civil or criminal courts, of a warrant being granted to bring a witness from England: to apprehend him by habeas corpus, that is the only jurisdiction we can exercise. My lords, I understand in England it is not an easy matter to obtain witnesses, before their own courts; but of that I profess myself ignorant; but I know of no instance in which this Court have taken cognizance of the non-attendance of witnesses resident in a foreign country; for England, with respect to the law, is as much a foreign country as Germany, Italy, or any other country.

Lord *Swinton*.—By our laws we cannot grant a caption against a witness from a foreign country, and we cannot go beyond our power. It is clear to me, that it was not our fault that they did not attend—as to those that are lawfully summoned here, we can lay a fine upon them.

Lord *Dunsinnan*.—My lords, this Court ought not to be treated with contempt, and therefore your lordships would be careful to issue no warrant that you cannot enforce. The authority of this Court cannot go beyond their jurisdiction, which is confined to Scotland.

Lord *Abercrombie*.—By the laws of this country we have no authority over persons residing in any other country.

Lord Justice Clerk.—We cannot possibly differ upon this matter:—it is a downright absurdity, to issue a second diligence against witnesses residing in another country.—I am sorry for it; but he has got a fair trial by the laws of this country.—And as to what dropped from the panel just now, he must be very much mistaken, if he thinks he is tried for a crime committed in England:—that is by no means the case; he is tried for what he did after he came to this country. But it was very proper, in order to show the intention with which he came here, to state the fact, that he came as a delegate from a convention of the same kind in England; but it is for the crime that he committed in this country alone that he now stands at the bar.

Mr. *Margarot*.—My lords, I do not require the forms of justice, I require the essence of justice.—It seems that a panel is en-

* Afterwards Lord Viscount Melville. See his case, A. D. 1806, *post*.

titled to the same compulsory method of adducing witnesses in his favour, as the prosecutor has to adduce evidence against him.—Now general warrants have been issued to adduce evidence against me:—general warrants, I say it, have been issued to adduce evidence against me.—Now I demand nothing more than the regular forms of the Court, that your caption may be granted, and see whether they will obey the laws of their country or not.—And I am sorry to hear it come from the bench, that it would be nugatory; which implies, that there are men in England above the law.—Look to it my friends;—where is your boasted constitution?—If the first man in England is not as amenable to the laws of his country as the meanest of you, you are slaves.

Lord Justice Clerk.—You come here to speak to the Court, and not to harangue the *mob!*

Mr. *Margarot.* Do you call this audience a *mob*,* my lord?

Lord Justice Clerk.—You are not to harangue the multitude.

Mr. *Margarot.*—I understand that the judges have harangued the multitude too, and they have gone into a series of accusation against me, which I did not know was a part of the duty of a judge, who ought *jus dicere*, not *jus facere*. It has been said too, that England is as much a foreign country as Germany or Italy;—that I do not understand;—if this country is as foreign as Germany—Do not talk, for God's sake, of the English constitution; it does not belong to you—It is your duty, my lords, to grant me in the whole what you offer me in part.—As to those that reside in Scotland, you say we can punish them, but not those in England; and yet you could cite those that were in England: and it was backed by a judge in England; and if you grant a second diligence, the same form will be gone through again; and if, after a certain time, for I do not wish to avoid a trial,—no, I wish to come before my country, as every good citizen ought, to obey the laws of his country; and I do it with a conscious heart that I am totally innocent, and that I deserve praise instead of blame or punishment;—therefore, I say I will concede to you a part of the justice that I demand.—I have exculpatory witnesses of great importance living in England cited by your authority; in consequence of that authority it has been supported by the English judges,—the English judges will support your authority in a second instance.—Let them be cited;—let a proper time be given me, and if they do not appear at the second citing, I will consent to go to trial without them.—But, my lords, let justice take place;—remember you have, in the course of this trial, to praise the constitution, it will be told the people how happily they live under it—how free and how happy every man is living under his own vine and his own fig-tree.—Let it be proved, let it be proved that a court of justice does every thing in favour of the panel, as much as in favour of the prosecutor.—The objections that I made have been repelled; but they will be noticed in a superior court.—There is a court superior to your's, and there must be, in every well regulated government, an appeal to a superior court, from whence the abuses of the servants of the crown may be rectified.

Lord Justice Clerk.—I think you seem to be unacquainted with the laws of any well governed state, and if you were not a foreigner and a stranger, we would not have suffered you to have said one half of what you have said.

Mr. *Margarot.*—I demand a caption.

Lord Justice Clerk.—The Court have repelled it.

Mr. *Margarot.*—Oh! very well, my lords,—however, permit me one question, and I will put it to the generosity of the public prosecutor to answer it. My lord advocate, is it in your power or not to bring a witness on the part of the prosecution from England? upon your honour, answer me.

Lord Advocate.—No more than you can.

Mr. *Margarot.*—Does not an outlawry extend to England?

Mr. *Solicitor General.*—For a crime it certainly does, but not as to a witness.—Supposing a Scotchman to be tried before a Court in England, and in place of seeking the assistance of some English counsel, as he ought to do, he were to utter things of the same kind that this panel has done, I doubt whether he would be heard with the same patience with which your lordship has heard him.

Lord Justice Clerk.—Do you wish a caption against those two witnesses who reside in Scotland?

Mr. *Margarot.*—No, my lords,—I do not wish to punish two poor men, and let three rich men go unpunished.—There is another thing which I believe takes place before the impanelling of the jury, which respects the opening of the doors of this place. In looking over the claim of rights in the 27th chapter, I find it said that, in criminal trials, which are of so great import, the doors of the Court shall be thrown open.—I demand therefore that the doors of this place may be opened, in order that the people may partake of what passes.

Lord Justice Clerk.—It would be a very pretty opening I think.

* Lord Chief Justice Holt in the case of the Queen *v.* Tooley and others (who had killed a man by whom a woman had been irregularly imprisoned) delivering the opinions of the judges, of whom seven held that the offence was manslaughter, and five that it was murder, says, "It was objected by the five that it is dangerous to allow such a power to *the mob*, but I think that no proper word to be used in a court of justice."—11 Mod. 251.

Mr. *Margarot*.—The doors are shut, and I understand it is the custom of the door-keepers to take money, which is contrary to the laws of the land.

Lord Justice Clerk.—That you have no business with.*

JURY.

James Gordon, brewer in Edinburgh.
Thomas Hotchkis, brewer.
Samuel Gilmour, rope-maker.
James Clark, farrier.
James Mill, tanner.

Lord Justice Clerk.—Do you object to any of these gentlemen?

Mr. *Margarot*.—I have no personal objection, but I must beg to know by what law you have the picking of the jury, and that you alone have the picking of them?

Lord Abercrombie.—His lordship is not picking but naming the jury, according to the established law and the established constitution of the country;* and the gentleman at the bar has no right to put such a question.

William Smith, stabler.
Charles Robertson, painter.
John Balfour, merchant.
John Wilson, coach-maker.
William Ainslie, sadler.
William Pirnie, architect.
Samuel Anderson, banker.
Robert Burns, architect.
Macduff Hart, shoe-maker.
John White, merchant.

EVIDENCE FOR THE CROWN.

[*William Scott* called in.]

Lord Henderland.—Have you any objection to this witness?

Mr. *Margarot*.—According to the method in which you proceed, it appears to me very needless to make objections; otherwise, undoubtedly, my lord, under the British constitution, acting up to the spirit of it, that witness is not competent; he is a dependent, or hanger-on upon the public prosecutor, and, in fact, acts as deputy public prosecutor; you may repel it or not, as you please.

Lord Justice Clerk.—I dare say, your lordships will please to repel that objection.

[The witness sworn.]

Do you recollect, on the evening of the 5th of December last, going to apprehend the panel for examination?—I do.

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* Mr. Barrington, in his observations on the following passages of 13 Ed. 1, stat. 1. (cap. 42 & 44.) *De marescallis domini regis, de feodo camerar', custod' hostiorum in itinere justitiariorum:—ordinatum est quod de qualibet assisâ et juratâ quam custodiunt, capiant decem denarios tantùm, et de cirographis nichil.—De his qui vocati sunt ante justitiarios ad defendendum placitum suum nichil capiant pro ingressû vel egressû, ad placita coronæ de qualibet duodenâ XII. denarii tantùm capiantur*:—says, "The chief reason of my making any observations upon this part of the statute arises from the words seeming to afford a strong inference, that the courts of law were not at this time *open courts* in the sense that they are now understood so to be. An open court at present is generally so crowded by idle spectators, that no one who hath any real business to do can have access; or, if he procures a seat, he is not so much at his ease as those whose interests are depending have a reasonable right to insist upon. This statute therefore directs, that the plaintiff, or defendant should pay nothing; but by implication seems to allow that those who probably constituted the idle part of the audience should pay one penny each for admittance, which may be nearly equal to a shilling at present [A. D. 1775] so that if the spirit of the law was attended to, it would, in a great measure, prevent what is now so sensibly felt as an inconvenience. The statute then injoins the judges, in these emphatical words: 'Quòd dominus rex justitiariis in-'jungit in fide et sacramento quibus ei tenen-'tur, quòd si hujusmodi ministri contrà præ-'dictum statutum in aliquo iverint, pœnam 'eis infligant rationalem.' When the servants of judges at the Old Bailey, and the officers of the courts of Westminster-hall, have, upon certain occasions, taken not only a *penny* from the spectator, but even insisted upon gold; are they not within both the letter and spirit of this law? and is it not incumbent upon the judges to put it in execution agreeable to what is injoined by the statute?"

And in a note he says, "in the modern sense of an *open court*, the legislature could never have allowed any fees to be taken for admittance. I do not recollect to have met in any of the European laws with an injunction that all causes shall be heard *ostiis apertis*, except in those of the republic of Lucca. See l. 1. c. 10. Lucca, 1539, folio. In Scotland, by a statute of William and Mary, all causes must be tried with *open doors*, rape, sodomy, and the like, being excepted; and I am informed, that the propriety of this regulation is found by experience, as it permits the judge and jury to ask questions with greater freedom, and prevents idle people from learning many bad lessons."

See also Mr. Barrington's Observations on "Articuli super Chartas," 28 Ed. 1, stat. 3, wherein he notices, that from the expression in the Psalms "they shall not be afraid to speak with their enemies at the gate," lord Bacon has inferred, that the courts of justice among the Jews were open.

The Scots statute, mentioned by Barrington, is the claim of right mentioned by the panel.

* As to the mode of appointing juries in Scotland, see Vol. xix. p. 11, of this Collection.

Were you present when he was brought up for examination?—I employed Lyon, the messenger, to apprehend him, and was present at the sheriff Clerke's office, when he was examined.

Did he, upon that occasion, make a declaration?—He did.

Did he appear to be sober and of sound mind, at the time he emitted that declaration?—Yes.

Freely, and without compulsion?—Yes.

Did you subscribe your witness to that declaration?—I did.

Look if that is your subscription.—That is the declaration.

Were any papers, at that time produced, claimed by the panel?—The officer who executed the warrant reported to me, that he found Mr. Margarot and Mr. Gerrald in the same room; that he had taken into his possession several papers, part of them he described to be Mr. Gerrald's, part of them to be Mr. Margarot's; they were put into a trunk together; this trunk was brought to the office, and after he was examined, he was desired to give the key that it might be opened; he declined to do so; upon which we applied for a warrant to have the trunk opened, which was carried into execution; it was inspected in the presence of Mr. Margarot and Mr. Gerrald. He was brought to the office upon a second warrant, and Mr. Gerrald also attended; he refused then to give it up without force, and he held it in his hand and said, I will not give it up, but you may take it; he said, he would not witness the trunk being opened, and turned round and looked out of the window. Upon the trunk being opened, there were some articles that did not relate to the business in hand, particularly a pocket-book of Mr. Margarot's, and something of Mr. Gerrald's, which were restored; and those that were considered as relative to the business were entered into an inventory.

Did you subscribe that inventory?—I did.

Do you know that to be the same? [showing him the inventory.] This is the same; it is signed by Mr. Gerrald and me on every page; but Mr. Margarot declined signing it.

Did you, at that time, identify the papers that you found?—Yes.

Will you take the trouble of looking over these papers, and see if they are the same, and go through them accurately?—The first is a paper containing two letters signed William Skirving.

These are the papers Mr. Margarot claimed as his?—Yes.

The second is a manuscript of a plan for supporting the Gazetteer, submitted to the consideration of the Friends of the People, which is signed in the same manner.

The third is a bundle of papers tied up, and labelled, Papers for the Committee of Union.

The fourth is a letter, dated the 15th November, 1793, signed Thomas Hardy,* secretary, addressed to Citizen Margarot and Citizen Gerrald, delegates.

The fifth is a letter from ditto to ditto, 22d November, addressed Citizen Margarot and Citizen Gerrald.

The sixth is another letter, the 29th of November, addressed to Maurice Margarot and Joseph Gerrald, delegates.

The seventh is another letter from Thomas Hardy, dated the 28th November, addressed to Mr. Margarot and Mr. Gerrald, delegates from London.

The eighth, two pages of manuscript, beginning, Organization of Primary Assemblies, assembled for the Purpose of electing Representatives.

The ninth, a manuscript, intituled The Constitution; and in it were found other papers, relative to the regulations to be adopted in the convention.

Have you now gone through the articles claimed by Mr. Margarot?—Yes.

Were there several other articles claimed by Mr. Gerrald?—Yes.

Were they identified in the same manner? They were.

In the declaration you heard emitted by the panel, of the 5th of December, did he refer to any motion?—If your lordship will cause the declaration to be read, I shall be better able to tell you.

[The declaration handed to the witness, who reads it.]

Was there any reference to a motion?—Yes.

Was any paper found in the panel's possession?—There was a paper found when Mr. Skirving was apprehended; then, amongst other papers, this motion was found; and when this gentleman was examined, this paper was shown to him, and the question stated in the declaration put to him; it was found in the possession of Mr. Skirving, the secretary to the convention, upon the same morning that Mr. Margarot was taken up.

Did you put any mark upon that paper, by which you should know it again?—Yes, I put my initials upon it; it is a motion signed by Mr. Margarot, and seconded by John Wardlaw.

At the time the secretary's papers came to be inspected in your presence, was there a paper discovered amongst them, bearing to be the Minutes of the Convention?—There was.

Did you put any mark or subscription upon that at the time, so that you should know it again?—I did.

Did you look through it?—I did read the whole of it.

How were these papers of the secretary brought before you?—By a warrant. The

* See his Trial for High Treason, A. D. 1794, *infra*.

papers were found sealed in the secretary's house, and were brought, in that situation, to the sheriff Clerke's office, and they were there with the rest.

Did you attend the magistrates of this city on the evening of the 5th of December, when they went to disperse this convention?—No; I did on the 6th; the convention had assembled; the provost went along with the sheriff's substitute, Mr. Davidson, and the magistrates, and I accompanied them upon that occasion. I found Mr. Margarot standing by a table, and the chair was standing empty. The first thing that I heard was, Mr. Margarot said, they were met for a constitutional purpose, they were going to petition either the King or the Parliament, I cannot say which, and it was said by somebody, that they could not proceed to business till the chair was taken: Mr. Margarot was called upon to take the chair, which he accordingly did. Mr. Davidson asked if it was the British Convention? Upon being told it was, he told them that they came for the purpose of dismissing them, and they should not proceed to any business; the answer was, that they would not till force was used; and particularly the panel said, that he would not leave the chair, as he was then discharging his duty, till force was used; to that Mr. Davidson said, he supposed any thing that had that appearance would be satisfactory, and took Mr. Margarot by the hand, upon which he left the chair. Upon his leaving the chair, there was a call for Mr. Gerrald to take the chair, which he accordingly did, and the same form was used with regard to him; Mr. Davidson took him by the hand; and it was then called out, that they never dismissed without prayer, and Mr. Gerrald prayed, and then came out of the chair. It was then said by somebody, that though they were now dismissed, they would remember that they were permanent, that they had voted themselves permanent the night before.

Did this happen the day after the panel had been examined before the sheriff, and liberated upon his finding bail?—Yes.

Was it on account of a charge of seditious practices of the same nature, that he was brought before the sheriff?—It was for being a member of that convention.

William Scott cross-examined by Mr. Margarot.

By virtue of what authority did you employ Lyon, the messenger, to arrest me?—By virtue of a warrant which I had obtained from the sheriff of Edinburgh, as procurator-fiscal.

Was that warrant granted at your requisition?—It was.

Now answer me seriously one question; from whom did you receive the order to apply for that requisition?—That certainly has not any connexion with the present business, and I think I am not bound to answer that question.

It has, sir! and you must answer it as you appear before God at the great day.—[The witness hesitated.]

Mr. *Margarot*.—My lord, I must have the protection of the Court.

Lord Justice Clerk.—I do not think it is proper that he should tell who gave the information.

Lord *Abercrombie*.—I am of the same opinion.

Lord *Eskgrove*.—He acted as procurator-fiscal of Edinburgh, and therefore he is no more liable, or bound, to say who was his private informer, than my lord advocate is.

Lord *Dunsinnan*.—It is entering into an investigation which the panel has no right to make.

Lord *Swinton*.—I am of the same opinion.

Mr. *Margarot*.—My lords, I hope I have not put an improper question. I know it is customary at Venice, they have a lion's mouth to receive all private secret information; but I did not know that it was so here; I thought that justice was open.

Lord *Abercrombie*.—I am sorry to observe, that from the beginning of this trial, the panel has betrayed the grossest ignorance of the laws of this country; and I must regret, that he has not had the advice of those who know better; but if he is to object to things in this way, I trust he will do it, for his own sake, in a decent manner.

Mr. *Margarot*.—Then I am to understand, that the reception of secret information is a part of the laws of this country.

The officer found Mr. Gerrald and me in the same room?—I was told so, but that is only from report.

Where was that room? at the Black Bull?—Yes, I was told so.

At a public inn?—Yes.

Was the door locked?—I cannot say.

How do you ascertain that those papers were mine which you have just now produced?—I have told you all that I can; it was from Mr. Gerrald's and your own pointing them out.

I understand you have said, that I emitted a declaration. A declaration, if I understand it rightly, is a certain verbal acknowledgment.—A declaration may be negative, and it is still a declaration.

Lord Justice Clerk.—You may make a declaration that you are innocent, as well as that you are guilty.

Mr. *Margarot*.—It would have much the same effect.—What reason did I allege for refusing to emit a declaration?—I do not recollect.

In the course of your practice do you know any law which enforces a private interrogatory?

Mr. *Solicitor General*.—If the gentleman is an attorney, as I am told, I should like to know, whether he would be suffered to go on in this way in the courts of Westminster-hall?

Lord Justice Clerk.—It is certainly not a question fit for the witness to answer.

Mr. *Margarot.*—Have you any mode of distinguishing those papers found in my trunk, from those that belonged to Mr. Gerrald in the same trunk?—I cannot say.

Then it may happen, that you may have intermixed a paper of Mr. Gerrald's and a paper of mine?—No; they were taken down distinctly, and marked with your initials in your own presence.

Who arranged the papers?—I arranged them in your presence; I took them out, at least.

Lord Justice Clerk.—Did not you say, the panel picked out his papers, and Mr. Gerrald his?—Yes; there was a paper put in, and all below that belonged to him; the rest belonged to the panel.

Mr. *Margarot.*—Did I not observe to you at the time, that being at an inn, we could not be answerable for what papers were found in our room?—I dare say you did.

Did I not say, that even the messenger might bring that paper if he thought proper, and hustle them into the trunk at once?—So you did.

By what means are you certain, that the papers which you found in Mr. Skirving's possession, were minutes of the convention?—From various circumstances; but I submit again to the Court, whether it is proper to answer that?

Lord Justice Clerk.—Yes, you must give answers to legal questions.

The minutes were established to be the minutes of the convention by some of the members.

You accompanied the sheriff to Mr. Laing's room?—Yes

Did I say any thing to you at that time?—Yes, you were the first person that called to me, handed me a motion, and desired I would read it. I told him, I had nothing to do with it. It was a motion to petition the King, or something of that kind.

Do you recollect the sheriff-substitute saying, that he acted by orders?—I cannot say; but he certainly told you, he came for the express purpose of dismissing that meeting, and that you must do no business as a British convention.

Did I not speak to you, and you afterwards answered me, that you were doing your duty?—Yes, by attending the sheriffs.

You say that the meeting ended with prayer; can you recollect that prayer?—I cannot.

Does beginning and closing a meeting, for obtaining a reform in parliament, with prayer, apply to the word sedition.

Lord Justice Clerk.—That is a very improper question.

Did the petition for the warrant state, that I had met with others in Laing's workshop, that I had been forced from the chair, that we had said that we were assembled for petitioning a reform of parliament, and closed with prayer? Was that warrant which took me up then the same as before?—The warrant could not mention it, because the petition was two days before the warrant was obtained, it could not mention that which did not take place till two days after.

Harry Davidson sworn.

Do you recollect the panel being brought before you upon the 5th of December for examination?—I do.

Did he at that time emit a declaration in your presence?—He did.

Did he do it voluntarily, and without compulsion?—Yes.

Was he sober, and of sound mind?—Yes.

Did you subscribe that declaration?—I did.

Look and see if that is it.—It is the same.

Is there any reference in that declaration to a motion?—Yes.

Was there a paper found in the secretary's possession which appeared to be that motion?—Yes.

Did you put any mark upon the paper so as to know it again?—Yes, this is it.

Do you recollect any other paper having been produced at that examination or afterwards?—There were no papers produced that day; the next day there were papers taken from a trunk of his, of which an inventory was made, which I identified.

Was that trunk brought along with him?—Yes.

Was he asked for the key of that trunk?—Yes, and he declined giving it up.

Was there any seal put upon it?—Not in my presence; I understood there was.

When it was opened the following day, was any inventory made of its contents?—Yes.

Were there any papers other than those claimed by the panel?—Yes papers belonging to Mr. Gerrald.

Were those claimed by the panel separated from those claimed by Mr. Gerrald?—Yes, and an inventory was made of both, and they acquiesced in both.

And it was done in their presence?—Yes.

Did you subscribe that inventory?—Yes.

Did you likewise put any mark upon the articles which it contains?—Yes.

Did you compare those articles which have your subscription with the articles which are in the inventory?—Yes; it was only those that were relating to the business in hand that were put into the inventory [Examines and compares them]. They are all marked by me.

Do you recollect why Mr. Margarot was liberated?—Upon finding bail.

What was the nature of the charge against him for which he was brought before you for examination?—For seditious practices, as being a member of the meeting calling themselves the British Convention of the delegates of the Friends of the People.

Do you recollect to have gone in the execution of your duty to a wright's shop on the south side of the town, the 6th of December, with a view of dispersing this meeting?—I did.

Be so obliging to mention to the Court and Jury what passed when you so went to that meeting.—It was on Friday evening the 6th of December, I went and attended the lord provost, with the magistrates of the city; a great number of people were assembled in a wright's shop, and I went immediately up to the table, where I saw some people whose faces I recognized, Mr. Skirving, Mr. Brown, Mr. Margarot, and several others; I asked what the meeting was? I did not get a direct answer; I asked if it was the British Convention? One of the members, and I think it was Mr. Margarot, said that it was; I told him that I was sheriff substitute for the county, and that I came there to disperse that meeting, which was an illegal one: upon this some conversation took place; and I think Mr. Margarot was the man who spoke most on account of the Convention; he said, they were met peaceably, that it was a legal constitutional meeting, and that they were then meeting upon a petition to parliament. I told him that my resolution had been taken before I came there; that I came with a determination to disperse that meeting; that no words were necessary; no argument that they could use could alter my determination; some more conversation took place. Mr. Margarot, finding I was determined upon it, said that he would take the chair, with the approbation of the meeting, which was then empty; accordingly upon this, he was unanimously called to the chair: I think before he took the chair, he said, the meeting would not disperse without force was used; I told him, I hoped it would be unnecessary to use force, but if it was necessary I should certainly make use of it. He took the chair, and finding they would not disperse without some force, I took him by the arm, which he considered as force, and he came out of the chair; immediately upon his doing so, Mr. Gerrald, another of the gentlemen present, took the chair; I told him, I really thought that it was improper that another person should do the same thing, if they were all to take the chair one after another; I hoped they would not think that necessary; however, I took the same method of forcing Mr. Gerrald from the chair that I did Mr. Margarot: Mr. Gerrald then made an extempore prayer,* and left the chair. Mr. Margarot, amongst other things that he mentioned, said, the meeting of the Convention had declared themselves permanent. I told him it might be so, but I was determined they should not meet within the county where I had a jurisdiction. I think they called out for the gentlemen to disperse, and by degrees they dispersed; and I saw the last person out, and saw the door locked, and took the key.

You said you recognized several persons; among others the panel at the bar, and Mr. Gerrald. How came you to recognise the panel particularly?—Because he had been before me the night before, and had been examined upon the charge I have already mentioned.

You had granted bail?—Yes.

Harry Davidson, cross-examined by Mr. *Margarot*.

How are you sure that the motion which you found in the possession of Mr. Skirving is in my handwriting, as you have declared it to be?—I did not assert that it was your handwriting, at least I did not mean to say so.

Did I not give one uniform reason for declining to emit a declaration, for refusing to give up the key of my trunk, and for asserting the right of the convention to meet; did I not say, that the proceedings against me and against them were illegal?—You certainly did.

Did I not ask you, why you would interrupt us in our legal proceedings? and did you not answer me, that you acted according to order? Remember, sir, that you are upon your oath.—I cannot say that I recollect, whether I said by order, as sheriff substitute of the county, I acted by my own authority; I do not recollect the precise words I may have used, but I was certainly acting as sheriff of the county.

What could induce you to think that a meeting like that was illegal?

Lord Justice Clerk.—That is not a proper question.

Mr. *Margarot*.—It only hinges upon another. Did you see at the time of your entrance there, any confusion, riot, or disorder?—I did not.

Did you, on the contrary, perceive the business of the evening carried on with regularity?—There was but little business going on after I came in. Mr. Gerrald was upon his legs speaking, and I certainly interrupted him.

Was prayer called for?—It was. I do not know whether it was not you that said it was not usual that the meeting should depart without prayer, and I believe I gave consent that prayer should be made.

O, you did consent to that? Do you recollect the subject of the debate?—I think you, or some other person, put into my hand a small piece of paper, upon which was wrote a petition to parliament, which you said was the subject of the—

Mr. *Margarot*.—Of the order of the day.—That the purpose of their meeting was to petition parliament.

I hope the order of the day is not an offence, because I believe it is made use of sometimes in the House of Commons.

* In the original edition of Gerrald's trial, this prayer was inserted by way of appendix; see it in the case of Skirving, *ante*, p. 471.

Counsel for the Crown.—The witness has spoke of the motion referred to in the declaration. Was there any paper found in Mr. Skirving's possession, which was entitled minutes of the convention?—There were a number of things found in Mr. Skirving's possession; amongst which a scroll of the minutes of the convention.

Should you know it again?—Yes.

Look at that and see if that is it?—It is.

Mr. *Margarot.*—How are you certain that these are the minutes of the British Convention.—I can only say, that these are papers which were found in Mr. Skirving's possession, and they were acknowledged to be so by various people, who were examined before me; that is the only reason I have: I did not see them in the convention.

There is another question which I hope your lordships will not think improper. In your office as sheriff, have you, to the best of your judgment, acted according to the laws of your country, or have you acted by superior orders?—I certainly would execute no orders, unless I was certain they were according to the laws of my country.

Am I to infer from hence, that you received orders?

Lord Justice Clerk.—It is not a proper subject of evidence.

Mr. *Margarot.*—I put myself under your correction at the time I started the question; however, it may not be amiss that the question was started, though it is not answered.

Joseph Mack, sworn.

Do you recollect being present when Mr. Skirving, the late secretary of the Convention of the Friends of the People, was brought before the sheriff for examination?—Yes.

Were there certain bags of papers brought along with him for inspection?—Yes.

Were you present when those bags were opened?—I was, when they were put into the inventory, which was very soon after or immediately after they were opened.

Was Skirving present?—Yes.

Do you recollect, among other papers found in this bag, one being found, entitled the scroll of the minutes of the convention?—Yes.

Was it in your hand, that you had an opportunity of observing it at that time?—I both saw it then, and at Mr. Skirving's house; they were carried in a bag from his house to sheriff clerk's office, and there entered into an inventory—that is the paper.

And you now recognize it as the same?—[Looks over it.] Yes, it is the same.

Joseph Mack cross-examined by Mr. *Margarot*

You act as notary, do you not?—No, I do not.

Or as clerk to the sheriff?—Yes, writing clerk to the sheriff.

Did you hear me protest against the illegality of all the proceedings which had taken place?—You offered to make a protest, but it was refused to you.

You are certain that I offered to make one?—Yes.

A written one?—I do not recollect whether it was written or not: I think it is probable it was, but I cannot say—I was not a notary.

James Lyon called.

Mr. *Margarot.*—I have objections to that witness, on account of certain expressions of his, and I have a witness now attending to prove those words. I do not know whether that witness should be brought in at present to prove this, or whether it should be kept back till the witnesses for the prosecution are gone through.

Lord Justice Clerk.—What do your propose to prove?

Mr. *Margarot.*—That he considered himself as my enemy; these are nearly the words, I look upon myself to be your enemy; or something to that effect.

Can you condescend upon any reason, why he should have any enmity to you?

Mr. *Margarot.*—I have not the skill of other people; I cannot dive into men's hearts; I find him a very officious time-serving man.

Lord Justice Clerk.—He must answer that question upon oath, whether he has any malice or ill-will.

[Sworn.]

Lord Justice Clerk.—Look upon the panel at the bar; have you any malice or ill-will against that person?—None at all.

Did you ever say that you were his enemy?—Never.

Lord Justice Clerk.—You may ask him the question again, Mr. Margarot.

Mr. *Margarot.*—I would wish to have my witness produced in court; it is not my asking him the question merely, do you not recollect saying one day that you considered yourself as my enemy?—Not at all.

Lord Abercrombie.—The Court have uniformly laid this down as a rule, that no general charge of a witness making use of an expression of that nature shall be sufficient to invalidate his testimony, and for this reason, that it would put it in the power of every witness whatever, if he wished to favour the panel, to disqualify himself by uttering some vague expression of ill-will.

Lord *Eskgrove.*—What are you?—A messenger.

Lord Advocate.—Did you execute a warrant against the panel?—Yes.

And against any body else?—Yes; Mr. Gerrald.

Where were you informed these persons resided?—At the Black Bull.

Were you to take into your custody any papers that you found?—Yes.

At what time in the morning was it?—To the best of my knowledge about seven o'clock.

Tell the Court and jury what passed.—I asked for such gentlemen, I asked for their room; the waiter declined showing me, but told me the numbers of their room; I went into this room where Mr. Gerrald and Mr. Margarot were; they were each in separate beds in the same room.

Did you tell them you had a warrant against them?—Yes; then I went to Mr. Sinclair's room, and locked up all Mr. Margarot's papers, and Mr. Gerrald's and Mr. Sinclair's also; Mr. Margarot said he would put his papers into a little trunk, which I did not object to.

Did he accordingly do so?—He asked Mr. Gerrald if he would put his in, upon which he agreed to it, and the papers were put in; and when I was away and came back for them, he said he would not give them me; I said I would take them; he said I might take them at my peril, and I said I should not make any scruple about it.

Did the key remain in his possession after the paper was taken away?—Yes, the trunk was locked and he kept the key.

Did you take the trunk and him with you to the sheriff's?—Yes, and Mr. Gerrald.

Were you present when the trunk was opened and the contents examined?—I was.

Did the panel agree to open the trunk himself, or was it opened?—The next day when he was before the sheriff, he held the key in his hand; he said he would not give it up, but we might take it from him; upon which the sheriff-substitute desired me to take it from him, which I did; the trunk was then opened and the papers inspected.

Were those belonging to the panel distinguished from those belonging to Mr. Gerrald?—Each of them claimed separately what belonged to himself.

Was there any inventory made of those papers?—Yes.

Did you put any mark upon those papers?—I did.

Look at those papers deliberately, and see if they are the same?—[Examines and compares them with the inventory]. Yes, they are the same, they have my initial.

When you went to the Black Bull had you any assistants with you?—Yes, John M'Donald, and Neil M'Glashan, were both in the room along with me.

James Lyon cross-examined by Mr. *Margarot*.

You found us in bed?—Yes.

Did we show any disposition of resistance, or rather testify the greatest alacrity to go with you?—You showed no disposition to make any resistance; you did not refuse to come along with us.

Did we make you wait long in dressing?—No.

Did you show us the warrants?—No, nor did you ask it.

Did we never ask you to see the warrant?—No.

Where did you find the papers in the room?—I found some upon the top of the drawers' head, some in the drawers, and some out in a trunk.

Were the drawers locked?—No.

Was the door of the room locked?—No; I knocked at the door, and you desired me to come in, and of course I opened the door.

Were the papers in a state of arrangement when you took them off the drawers, and out of the drawers?—No, by no means.

Were they not rather confused?—Yes, they were a little confused.

Were there some in one place, and others in others?—Yes, some I got out of the trunk, and some in the drawers, and some off the drawers.

Were there papers in more than one drawer?—I believe there were; I cannot say.

But the drawers were not locked?—I believe not, at least I broke none of them open.

John Macdonald sworn.

Did you go along with Mr. Lyon, the messenger, to assist him to execute a warrant against the panel at the bar, on the 5th December last?—Yes.

Where did you go to?—To the Black Bull, at the head of Leith Walk.

Tell us, as far as you recollect, what passed upon that occasion.—I went into the house, and stood there till the door was opened; Mr. Lyon went in; we went up the stair, and this gentleman and another were in the bedroom, but had not got their cloaths on, and we stood at the door till they were ready; and Mr. Lyon took what papers he could find, and they were put into a trunk; the trunk was locked, and he put the key in his pocket, and there was a coach at the door; and I took down the trunk, and put it in the chaise, and he came along with us, and I got at the back of the chaise, and went to the sheriff clerk's office, and left the trunk in the office.

You have mentioned what passed in the room, and the manner in which the papers were put in the trunk; now, did the panel himself put any of the papers in?—Yes, he was helping.

Did Mr. Gerrald likewise assist to put the papers in the trunk?—Yes, Mr. Gerrald's papers were put in first, and then Mr. Margarot's, and then the trunk was locked and carried to the sheriff clerk's office.

John Macdonald cross-examined by Mr. *Margarot*.

Could you at that time discriminate which were my papers, and which were those of Mr. Gerrald?—I can neither tell which were yours, nor which were his; but, it is my opinion, your's were put in first.

Were the drawers locked?—No.

You did not see a key in those drawers?—No.

Was the room-door locked?—No, it was open when I came in; you were apprehended, I dare say, before I came in.

Were the papers put into the trunk tied up in parcels or loosely?—Some were tied up, and some were loose.

Did we tie up any of them before you?—I did not see any string tied on them.

Who took them out of the drawers? —Mr. Lyon took them out.

Do you recollect the reason why Mr. Lyon would not show me the warrant?—You did not insist upon showing it much.

Did he show it? and remember you are upon your oath.—I cannot recollect.

You well recollect that I asked him to produce it?—Yes.

And you are not certain that he did show it?—No.

But you perfectly recollect that I asked him to show it?—Yes.

Thomas Cockburn called.

Lord Justice Clerk.—Have you any objection to this witness?

Mr. *Margarot.*—No, my lord, he looks honest. [Sworn].

Are you a member of any of the societies of Friends of the People?—I was.

Were you a delegate from that society to the British convention?—Yes, I was a member of both.

Did you attend regularly their meetings?—My business did not allow me a regular attendance, but I attended as often as I could.

Do you recollect, during your attendance at those meetings, whether there was any subdivision, any smaller meetings that the convention was divided into?—Yes.

What were they called?—The first name they got was divisions; but they were afterwards called sections.

What terms did the members of the convention generally address each other by?—The terms were different; but the general term was, citizen.

Do you recollect that you had different committees appointed in that convention for the forwarding of business?—I do not recollect several committees.

But some?—I have heard some mentioned.

And what were they called?—That that I recollect most, at present, was the committee of union.

Did you ever hear of a committee of secresy?—Yes.

A convention of emergency?—I do not recollect the hearing of that.

Do you recollect hearing the term organization mentioned?—I do not remember.

Had you primary assemblies to refer to?—I cannot say.

How were your meetings called?—It was generally called the British convention.

But when you met on a particular night, and talked about it the next day, what name did you give it?—The British convention.

Did you ever use the name of sittings?—Yes, frequently.

You say you attended as often as your business permitted?—Yes.

Have you had occasion to see the panel there?—Yes, frequently.

Did you ever see him act as preses, or chairman at these meetings?—Yes.

Did you ever hear him move any resolutions at these meetings, of any kind?—I have very frequently heard Mr. Margarot speak; but unless some particular resolution be mentioned, I cannot say.

Do you recollect at any time, any motion or proposal for a committee of union?—No; I was not present then.

Do you recollect his having delivered a speech, at any of the meetings you have attended, that had any relation to a convention bill?—I do not recollect.

With any reference to such a bill as had passed in Ireland?—No.

Mr. *Solicitor-General.*—Do you remember a motion being made by Mr. Callender?—Yes.

Do you remember any thing what it was about?—I remember one of the motions, about the people meeting in defence of their liberties, in case of any bill being brought into parliament, similar to a convention bill in Ireland against the constitution of the country.

What did Mr. Callender propose that your convention should do in that case?—I recollect a motion of that import being introduced, and that Mr. Callender acknowledged the motion as his; but as to any thing relative to that motion, I do not know.

Were you present when the motion was made?—There was a rule in the convention, that no motion should be discussed the same night on which it was made; I was present when it was brought in by Mr. Callender.

What was it that Mr. Callender proposed should be done in case such a bill should be brought into the British parliament?

Mr. *Margarot.*—I object to that question, as it respects Mr. Callender, and not me.

Mr. *Solicitor-General.*—It is charged in the indictment against the very panel; and therefore I will repeat the question. What was it that Mr. Callender proposed should be done, in case it should be brought into the British parliament?—That the people should meet to assert their right, so far as I recollect.

Was there any debate upon it that night?—It is a rule that there shall be no debate when a question is proposed.

Were you present when it was discussed?—Not when it was discussed in that shape in which Mr. Callender introduced it; but I was when it was amended: so far as I recollect, the spirit of Mr. Callender's motion was retained; but it was very much extended: there was a proposal of what, in certain events, should take place. I do not clearly remember the circumstances about it; but it was a motion for a secret committee, in case those events should take place.

Was it proposed that the convention should assemble in certain events?—Yes, it was, that they should meet in a certain place, in certain events.

Now, be so good as tell us what those events were, as far as you remember them?—The one already named, was that of a bill being brought into parliament similar to the convention bill in Ireland; as to the other, I cannot remember.

Was any thing said about the suspension of the Habeas Corpus act?—I think there was.

Was there any thing said about the repeal of the Scotch act, 1701, of wrongous imprisonment?—I do not recollect that.

Was any thing said in case of an invasion of foreign troops?—I think I remember that.

Was any place fixed upon for the meetings? how was that determined upon?—There was a motion that the place should be fixed upon by a secret committee; they were to find out a way of letting the delegates know of it.

Was it not to be published?—No.

Was it to be told them immediately, or only told them when that emergency should happen?—There was a mention of a sealed letter to be given to each delegate.

Who made this motion respecting the place of meeting?—I cannot recollect.

Read that paper.

[The witness reads it.]

"Citizen Margarot proposed the following motion: That a secret committee of three, with the secretary, be appointed to determine the place where such convention of emergency shall meet; and such place shall remain a secret with them, and with the secretary of this convention; and, that the delegates shall, at the breaking up of the present session, be entrusted with a sealed letter, containing the name of the place of meeting. This letter shall be delivered unopened to their constituents; the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state, until the period shall arrive at which it shall be deemed necessary for the delegates to set off. This motion was seconded by citizen Moffatt.

Is that the motion?—To the best of my recollection there was a motion of a similar import to that.

Do you know who were the members of this secret committee?—I recollect some of them.

Was Mr. Margarot one of them?—To the best of my recollection, he was one of them.

Do you remember Mr. Margarot making any speech to the convention before he had made his motion?—I do not.

Do you remember his saying any thing at all about its being a tocsin?—I do not.

You remember that the case of the convention bill was one of the cases of emergency?—Yes.

And of the suspension of the Habeas Corpus act?—I heard that mentioned.

You also recollect something about an invasion being mentioned?—I think I do.

Did you hear any proposal during the time you attended this meeting, that this convention should act in case they should be dispersed?—Yes.

Who made that motion?—I do not recollect at present.

Do you think Mr. Margarot made a motion of that kind?—It runs in my mind that he did; but I cannot swear that it was he.

Did you hear Mr. Margarot make any speech that had a reference to that case?—I think I recollect something of Mr. Margarot speaking as to the propriety of such a thing.

Are you sure?—I cannot be particular; but there is a conceit in my mind that he did.

Do you remember Mr. Sinclair making a motion of that kind?—I think I do.

Do you remember any thing particular about the passing of that?—So far as my recollection serves me, we were pretty unanimous.

Do you remember all the convention standing up at the time they passed it?—Yes, I think I do.

Did it contain any particular expressions of their declaring before God and the world that they would do so and so? Do you recollect that that made a part of the motion?—Certainly these words were mentioned, but I am not certain whether it was the decided resolution of the convention or not.

Do you remember whether this motion, or the resolution of the convention, bore any thing that they declared before God and the world that we should follow the wholesome example of former times?—I cannot say; I do not remember it.

Did it say any thing about paying no attention to a convention bill if it should be passed?—I think there was a mention of something similar to this, but whether it was made a part of the final resolution of the committee, I cannot tell: there was a great deal of loose expressions made use of.

Did you hear any thing said in the convention about burning that resolution of Sinclair's?—No, I heard nothing of that.

Did you hear any thing said about burning any of the other motions?—I do not recollect; they seemed to be confident of what they were doing, and were not acting under the apprehension of fear.

Was there any thing said about destroying or not inserting it in the minutes?—I do not recollect.

At the time this secret committee was appointed, was there any opposition made to it?—I do not recollect.

Thomas Cockburn cross-examined by Mr. *Margarot*.

It seems you are a member of the British convention?—I was.

What is your profession?—My profession

is partly a manufacturer in the weaving line, and partly a merchant.

Do you pay any taxes?—I do.

Do you find these taxes heavy?—I have very often thought them very heavy.

You are a member of the Friends of the People?—Yes.

What was your reason for joining the Friends of the People?—The reason was, a thorough conviction of the necessity of a reform in the British House of Commons.

What was your reason of accepting the office of delegate in the British convention?—It was to help forward that great and grand object that so forcibly struck my mind.

Did you mean to help it forward by legal means or force of arms?—Force of arms was never mentioned in the convention, and it is the last thing that I should wish to see, a drop of blood spilt in the cause.

In the British convention did you ever see any tendency to have recourse to open force?—It was diametrically opposite to my views to have the least recourse to open force, nor was it the subject of discussion in the convention.

Have you heard of a committee of union?—Yes.

What was to be the purport of that committee of union?—So far as I recollect, the design of that committee was, to draw up regulations, by which the people of England and of Scotland, of the same sentiments, might join in their endeavours to obtain that object.

You have heard of a convention of secrecy likewise?—Of a committee of secrecy I have.

Have you ever seen it customary in any clubs, if you ever belonged to any, that there should be a certain degree of trust reposed in a small number of confidential men, who should form a committee and retain some secrets to themselves, not to be divulged to the world? Have you ever witnessed any such thing, or does it strike you as an unprecedented thing?—So far from striking me as an unprecedented thing, that it strikes me upon many occasions as a necessary thing, prudentially to keep secrets of every society when it is necessary for their interest.

Have you ever heard of a committee of organization in the convention?—Yes, I think I have.

What was the drift of that committee of organization?—What I conceive to be the direct design of that committee was, to form rules, by which the convention might regulate themselves in their present and in their subsequent meetings, if they should see occasion for any.

Do you think that that committee of organization did not likewise refer to the internal regulation of the convention?—As I meant to express in my last answer, I considered the committee of organization to refer chiefly to the internal affairs of the convention, and with respect to future conventions, if there should be such.

It seems that you have heard that meetings of the convention were at times called sittings? do you imagine that that expression was adopted as borrowed from a neighbouring country, or that it was an expression which followed of course, and to which we are thoroughly accustomed in the English language?—However the reading of newspapers might lead us to make use of terms, I cannot say? but it was certainly a word that it was very natural to make use of.

You have seen me act as preses?—Yes.

That word is Latin, is it not?—I am very little acquainted with Latin; I meant president.

You are sufficiently acquainted with it to know that at present Rome is the seat of the Pope, are you not?—We have no doubt of that.

Consequently if there is any criminality in adopting a French word, do you think there is not an equal criminality in using a Latin one?—These things appeared to me to be so trifling, that I did not think it worth my while to make any objection to them; some were of French origin, and some of British, and some of Latin; but I did not think it worth while to make any objection to it.

You have heard of a motion proposed by Mr. Callender; you were present when it was originally moved, that the people should meet to assert their rights in the convention?—Assert their rights, were the words, to the best of my recollection.

What do you understand by a convention?—What I understand by a convention is, a meeting of men for any purpose that they propose.

Are the men who meet in convention supposed to be delegated by a large body of men?—I cannot pretend a critical disquisition of these points, but it strikes me so.

By the word convention, and meeting in convention, did you understand a peaceable assembly of men assembled to deliberate, or did you understand by it, an assembly of men going to adopt violent measures, and to carry them into execution themselves?—What I understand by convention was, that they met with a sincere and hearty design to promote the good of the country, by a thorough reform in the British House of Commons, and that they meant to do this by peaceable means.

Do you imagine there are sufficient abuses at present in the legislature of this kingdom, to legalize our attempting to address them by petition, or any form that might be legal and constitutional?—I have already said that I am deeply impressed with the idea of the necessity of it: I see the most glaring abuses in it.

Do you imagine that if a convention bill was to be passed, or was even to be brought into the House of Commons, that it would not show a disposition in the House of Commons to extend their privileges, and to encroach upon our rights?—Such a bill has always struck me as sapping the very foundations of civil liberty; and, indeed going be-

yond the power of the legislators themselves, to deprive the people of their natural rights.

You say it is your opinion that there are already sufficient grounds for the good people of this country to demand a reform in parliament; do you think those grounds would not be increased by two such events as the bringing in of a convention bill, or a motion for suspending the habeas corpus act, which is one of the greatest privileges a subject of Britain enjoys, or the bill for preventing wrongous imprisonment; do you think that would not make a very considerable addition to our complaints?—I am satisfied in my own mind, that it would increase the grievances of the people, and be like a grave-stone to their liberties.

In what light did you look upon the members of the British convention? Did you look upon them as a turbulent set of vagabonds, or did you look upon them as a body of men delegated by some of their fellow subjects for a certain purpose, and that these men so delegated were industrious, peaceable, creditable men?—Their design, I have no reason to call in question, was the good of their country: as to characters, there is always a mixture in all assemblies; but I believe, taking the whole together, there was a great degree of respectability with respect to characters.

Then they did not appear to you to come under the description of swine, rabble, or wretches?—As the friends of their country, I believe not.

When is the properest time for men to assemble and deliberate? Is it in time of danger, or prosperity? It appears that the convention was to assemble in this manner, in the moment that an invasion of foreign troops should take place in Great Britain. Do you conceive that to be a time of danger, and calling for the attention of all Britons throughout the island; or do you think it a time for them to sit idle and suffer themselves to be enslaved by a foreign power?—I think it is high time that a reform had taken place, as it ought to have done long since.

When you have any thing that interests you very much, do you publish it all through your house, and different parts of your family, or sometimes keep a secret to yourself in your private affairs?—Yes, no doubt; and every person endued with any degree of prudence will find occasion to keep their secrets.

If you had a particular piece of business to do, and that you were apprehensive that a superior power, inimical to your design and to your welfare, would prevent you from doing that particular business at such a place, would you inform that inimical power where you were to meet to do that business?—I should certainly do every thing in my power, from common prudence, to keep it from him.

When you send a letter by the post to a friend, do you ever attach any degree of criminality to sealing that letter till he gets into the country, especially if you wish the contents not to be known to him till a certain period?—No.

Can you discover any thing of a seditious nature in a convention, standing up to pass a resolution?—No.

I find here something which I do not know whether it is thoroughly assented to by you, that there was a declaration before God and the world, that they would follow the wholesome example of their forefathers; what is the characteristic of Britons?—That they are strongly attached to the cause of liberty.

How came we by the revolution? was it by any exertion of our forefathers?—It no doubt was.

How came we by the Magna Charta?—So far as I understand the subject, it was certainly by the same means.

Did your forefathers do wrong in so exerting themselves?—My opinion is that they did not do enough.

Do you think it impossible for a House of Commons to do an unconstitutional act?—There have been many things done in the House of Commons, which I sincerely regret.

We had originally parliaments, or some time back, parliaments of three years; now by an act of parliament they are lengthened to seven years; suppose another act should make them during life, and a third act should make them hereditary, do you imagine that would be an unconstitutional act?—It has always struck me as a thing beyond their power to alter or destroy the fundamental rights of the people, or any thing that would extend their own power.

Do you imagine that the power originates with the people?—I do so.

Do you imagine it to be either in the Bill of Rights, or the claim of rights, expressed, that the people should be at liberty to meet to communicate to each other their grievances, and plan methods for obtaining redress?—I have often wished to see the Bill of Rights, the Habeas Corpus act, and all those things; but I have never had it in my power; but, in my opinion, the object of all government is the good of the people, and that the liberties of the people ought to be carefully guarded by them.

It appears by what has passed here, that the convention had some notion of a God: did they ever pray in their meetings?—They did.

Did you ever see any disorderly behaviour there? were they riotous or tumultuous?—Considering their number, they were free of that beyond many meetings that I have seen of the same number: I saw no riotous meetings: there were sometimes disputes, but no riots.

As to the burning of the motion, you said they were not acting under the apprehension of fear: did you suppose they could justify their proceedings?—I always considered, that in the convention the members that had occasion to speak, always spoke freely, be-

lieving that they had nothing essentially secret to keep to themselves, but that their great object was the good of their country.

Did you ever discover in the convention or in the members of it, either in or out of the convention, any propensity to sedition, treason, or rebellion?—I have always said, that so far as I could discern the design of the convention, it was, to obtain a thorough reform in the British House of Commons by peaceable and legal means.

Mr. *Alexander Aitcheson* sworn.

Lord *Henderland*.—Have you any malice or ill will against the panel at the bar?—It is impossible I should, my lord: on the contrary, I esteem him a second Sidney.—I am very much obliged to the public prosecutor, on account of my family; otherwise, I would much sooner appear here as the panel at your lordship's bar, than as a witness.

Counsel for the Crown.—Were you a member of the British convention?—Yes, of all the three conventions, I had the honour to be a delegate from the Canongate society; the delegates, considering themselves as delegates for six months, adjourned their meeting; but upon the account of the coming down of the English delegates, they resumed it again.

That was in November last?—Yes.

Who were the English delegates?—There were four or five of them; there was citizen Margarot, citizen Sinclair, citizen Gerrald from London, and citizen Brown from Sheffield.

Now did you act as secretary or assistant secretary?—Yes, assistant secretary.

Were there a scroll of minutes drawn up?—Yes.

Look at that, and see if any part of it is your hand-writing.—Yes, a very great part of it; but there were some others who wrote.

Who were they?—George Ross, and afterwards the convention appointed three assistants daily.

Who is George Ross?—Clerk in the Gazetteer-office.

This scroll of minutes, did they contain, so far as you could judge, a fair and distinct account of what happened in the convention?—To the best of my knowledge and belief they did. I should have been guilty of palming falsehood upon the public and the convention if they did not; but there may have been mistakes.

Were they corrected the day after they were made out?—By no means; they were postponed till a future day, till a committee should be appointed to revise them.

Was Mr. Margarot present at these meetings commonly?—As far as I observed, he was a regular attendant.

Was he sometimes chairman at the meetings?—Once he certainly was.

Look at that; whose hand-writing is it?—It is mine. [Reads it.] Citizen Margarot moved, that a committee be appointed to consider of the means, and draw up the outlines of a proper plan for a general union between the two nations, as before proposed.

Did Mr. Margarot make that motion?—He certainly did, or I should not have minuted it down. A simple fact, like that, I cannot be mistaken in; but in a speech, *vivâ voce*, I might have made a mistake. [Reads it again.] And give me leave to add, I expected, from Mr. Margarot's abilities and the spirit of the times, a more perfect system than was made up by a sycophant faction in the reign of queen Anne.

Look at that.—[Reads.]—Citizen A. Callender moved, that in case the minister bring into the Commons House a motion for a convention bill, it shall be noticed immediately to the delegates. The words, "shall be noticed immediately to the delegates," are in my hand-writing.

Do you remember any discussion in the convention upon that motion; particularly, did Mr. Margarot speak upon the occasion?—Indeed, my memory is so treacherous, that I cannot recollect any thing, especially when I am taking notes. If I do not write at all, I remember tolerably well the chief facts; but if I do write, I recollect nothing.

Was there any thing said about that event being a tocsin to the friends of liberty?—I never heard the word tocsin mentioned in the convention.

Do you remember any amendment or alteration upon Mr. Callender's motion, or if it gave rise to any other motion in the convention?—Such things may have happened, but I cannot recollect.

Do you know of a motion being made by Mr. Sinclair, in consequence of, and following up, Mr. Callender's motion?—I was absent a variety of nights, when I wished to be present, but particular business kept me away.

But did you hear Mr. Margarot make any motion in consequence of Mr. Callender's?——It is impossible that I can say.

Did Mr. Sinclair make any motion about the convention meeting on certain events?—Yes; there was a motion made, at least I understood so. I came in one evening, pretty late, and Mr. Sinclair, or some person, had made a motion; and as soon as I had taken my seat, Mr. Sinclair made a motion, that something that had passed before should be burned, and I was surprised, and got up and opposed it, and was seconded, upon the ground, that as every thing we had done before was open for the public, we should do nothing secret, and therefore the motion was not carried.

Did that motion relate to the delegates meeting?—I was surprised and alarmed at any thing being secret; but when I understood that nothing more was meant by it than merely concealing the place where they were to meet, I thought there was nothing at all in it.

Lord Justice Clerk.—Did you hear any thing of a committee of secrecy?—I inquired next day, and was told the nature of it, that it was merely to conceal the intended place of meeting, in case of opposition, and in case of necessity.

Did you hear any thing about the convention of emergency at all in the meeting?—Yes, at the sections, and amongst our friends.

Read that.—[Reads from the minutes.] Citizen Margarot read and proposed the following motion: that a secret committee of three, and the secretary, be appointed to determine the place where such convention of emergency shall meet; that such place shall remain a secret with them and with the secretary of this convention, and that each delegate shall, at the breaking up of the present session, be intrusted with a sealed letter, containing the name of the place of meeting; this letter shall be delivered unopened to his constituents, the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state, until the period shall arrive at which it shall be deemed necessary for the delegate to set off; this motion was seconded by citizen Moffat. The greater part of that is my own hand-writing.

You see mention is made there of a convention of emergency; now I want to know, as far as you recollect, the cases in which they were to meet?—As far as I recollect, they were to meet in case a motion was made in parliament, to bring in a bill similar to that, that passed in Ireland, to prevent our having any meetings.

Was one of the cases the suspension of the Habeas Corpus act?—I do not recollect.

Was the case of an invasion of foreign troops mentioned?—Yes.

Do you recollect any other case of emergency, in which the convention were to meet?—I do not recollect any other.

Was there another case, if any attempt should be made to disperse the convention? Was that a case in which they were to meet?—I cannot say that I recollect that.

Were you in the convention the evening before the apprehension of Mr. Margarot and Skirving, and the other persons?—I might, very possibly; but I do not recollect I was present that evening, after they had been apprehended in the morning.

But do you recollect whether you were in the convention the preceding evening?—I cannot charge my memory with it.

Look at that.—The whole of that is written by another person. [Reads from the minutes.] Citizen Margarot begs leave to bring in a motion to the effect, that the moment of any illegal dispersion of the present convention, shall be considered as a summons to the delegates to repair to the place of meeting appointed for the convention of emergency by the secret committee; that the secret committee is instructed to proceed, without delay, to fix the place of meeting; and that the same motion be considered next evening; which was accordingly granted. My lords, I observe, from the whole of this being written by another person, that I was not present at all that evening.

Lord Advocate.—Look at the first of these papers, Number 3, of the general inventory, and tell me if you ever saw it before?—[Reads from the minutes a motion for a union between the two kingdoms, to demand the restoration of their rights.] I think it is a most excellent motion, my lord, and am very sorry it was not followed up.

I did not ask you for your opinion, sir.—My lords, I beg to say, this prosecution, and all of them, are for opinions; and I must, before God, in justice to my country, declare, that it is for opinions as well as facts. Gentlemen of the jury, it is a prosecution for opinions.

Look at that paper, which has your mark upon it.—It has, but it is not my writing.

Where did you receive it?—From the convention; I remember reading it from the beginning to the end.

Who is James Gartley?—He was delegate from Glasgow.

Is it your hand-writing upon the back of it?—Yes, it is.

Had you an opportunity of seeing the newspapers, in which the proceedings of the convention were published to the world?—I had an opportunity; but was so extremely hurried at that time with my own business, and that of the convention, that I could not read them, but laid them by to be a treasure of entertainment at some future time; for four weeks, at that time, I did not read a single article in the Gazetteer.

Have you read them since?—Only in the sheriff Clerk's chamber; and that seemed to contain a very accurate account.

And corresponded with the minutes you yourself had taken?—Yes.

Alexander Aitchesan cross-examined by Mr. *Margarot.*

You were a member of the British convention?—Yes.

Were you, prior to that, a member of the Friends of the People?—Yes, long prior.

What was your motive for associating with the Friends of the People?—The public good, which, I hope, I will always have at heart.

What do you understand by the public good?—I understand, by the public good, that grievances should be redressed, and every man made as happy as possible.

Had you any specific plan?—Yes, we had just two objects; these two objects were, a shorter duration of parliaments, and a more frequent election of representatives; because we considered the length of parliaments, and the difficulty in the slow return of elections, to be the two great and fundamental causes of all the grievances which the nation labours under.

What sort of men were these with whom you associated, the Friends of the People? I do not particularly mean what class, high or low, rich or poor; but what morals, what temper, what behaviour? in short, what opinion do you form of them in general?—I considered them to be a good, moral, respectable set of people; not respectable in point of riches, but in that respect which will be looked at by the all-seeing eye of the Almighty, respectable in point of morals.

Did they ever show any disposition to treason, sedition, or felony?—Not that I ever saw.

Were you delegated by a society of the Friends of the People to the convention?—I was some time.

Did the other members of the convention represent a number of men from here?—Yes.

Did it appear to you, that the convention adhered to the spirit of reform which was set on foot by the Friends of the People?—They certainly did, to the best of my ideas; and even when they followed up the primary idea of shorter duration of parliaments, and more frequent elections, and adopted the idea of universal suffrage and annual parliaments, they went certainly no farther than the duke of Richmond and Mr. Pitt had gone before.

You must take care not to mention that word *primary*, because it may inculpate me farther; for that is one word that is charged against me.—I consider all words in our dictionary lawful to be used; and it is a dreadful crisis that we are come to, if a man is to be criminated for a word.

You spoke of the English delegates; you do not mean that they represented the people of England?—Certainly only those who sent them. I understood that Mr. Margarot and Mr. Sinclair represented about 5,000 people, and Mr. Brown about 5,000 from Sheffield.

You have not positively sworn to the entire scroll of minutes shown to you; some part of it you do not acknowledge?—I can only swear to that that was wrote by myself; and so far as my ideas led me to think, I was right in writing them.

Though the name of Minutes is given to them, are they, in fact, the minutes of the convention, till they have received the revisal of the committee?—Certainly not; to correct and to expunge all errors whatever.

Were they ever offered or sent forth to the world by way of publication?—Not that I know of.

Were they ever corrected by authority of the convention?—I never heard of it.

Are there any erasures, any interlineations in them?—Several emendations were made upon the motions of one or two members; but when several emendations were proposed, it was said, you may leave that to the committee.

To the best of your recollection, I made a motion about the union of the two kingdoms; did it appear to you, that that motion had a seditious tendency?—On the contrary, I conceive it would be for the good of mankind, and the salvation of these kingdoms.

Do you look upon tocsin to be a French word?—I suppose so; but I cannot say that it is; I never heard it made use of in the convention.

Are you sure that it is not, instead of one French word, two Chinese words?—I cannot say; I know nothing about the Chinese.

I have a notion it is; then all the knowledge you gained of a secret committee, was the next day among the sections, and among the Friends?—That reminds me of a mistake I made before; for I find that I have recorded that very motion which Mr. Sinclair moved to be burned, and which was afterwards agreed not to be burned; and I heard farther of the business next day.

There was a motion made for a convention of emergency; did the convention ever fix upon, or delineate the plan by which they were to act, or did that convention ever take place?—Not that I know of.

In joining the Friends of the People, and in joining the British convention, for the purpose of obtaining a reform, did you think yourselves warranted by the constitution to endeavour to obtain a redress of grievances?—Perfectly; and I would think so still if I were to be sent to Botany Bay for it.

Are those grievances done away?—By no means; and I am sorry for it.

Are you of opinion, that if a Convention Bill was passed in the British parliament, it would tend to lessen those grievances?—It would extend them tenfold.

What would be the consequence of the suspension of the Habeas Corpus act, and of the act for preventing wrongous imprisonment?—It would be certainly a great encroachment upon the privilege of Britons.

Might not every peaceable inhabitant of these realms run great danger, in case of a foreign invasion, of losing his property, by the enemies plundering him of it, if they were successful?—I have no doubt of that.

Do you think it would be more constitutional in Englishmen, more constitutional in Scotchmen, more constitutional in Britons, to sit idle, and look at a foreign invasion, or attend a convention of emergency?—I dare say the whole Court, and all the audience will agree, that to meet upon such an occasion, would be a work of necessity.

Was foreign invasion the expression that was made use of, or was a French invasion ever mentioned?—As far as I recollect, French invasion was mentioned in some person's motion: but I cannot say in whose motion, or whether it was in doors, or out of doors; or in the convention, or out of the convention, I cannot say.

Then you mean to say, that an invasion from France, was uppermost in the minds of the convention?—I cannot say what was up-

permost; but I know I have heard that expression, but I believe it was out of the convention.

Was it customary for motions to be handed to the table, which were not passed in the convention?—Many such were handed in, and many not passed, and not taken notice of at all.

Are you certain, that the two motions shown you just now, and which were indorsed by you, and, I presume, were given in to you in that manner, are you sure they were ever read in the convention?—Be so good as show me them again [looks at them.] One of these motions, is certainly new to me since I came before the Court: a person might say to me, there is a question concerning the union, and I might indorse it so without ever reading it.

What was the mode of proceeding, in opening and closing the business of the day?—As the business of all Christian people should be, it was begun and ended by prayer.

Did you ever observe any thing of a seditious or riotous appearance in the convention?—Not in the least.

Did you ever hear any thing mentioned, or whispered in the convention, that might tend to overturn the constitution?—Never.

Did you ever hear any thing mentioned there against the king?—Never.

Did you ever hear any thing mentioned there against placemen and pensioners?—Often.

That, I suppose, is the sedition that is meant to be charged.

George Ross sworn, examined.

Witness.—I thought it very hard that the lord advocate, when I was here before, should charge me with falsehood.* I hope he will not do so now.

What profession are you of?—Clerk in the Gazetteer Office.

How long have you been in that profession?—Seven or eight years.

Were you a member of the meeting of the Friends of the People?—Yes.

Were you a member of the British convention?—Yes.

Delegate from what society?—From the Canongate society.

Did you act in any particular office in the convention?—I sometimes acted as assistant secretary.

Who else assisted the secretary?—Several persons.

Were there any persons who wrote shorthand, and took down the debates?—Yes, my brother.

Look at these minutes, and see if you can find your own hand-writing?—Yes.

Did you take down, to the best of your abilities, what did really pass in the convention?—I certainly would take nothing down that I thought improper.

And you would take down nothing but what passed?—No.

Do you recollect, if it was the practice, at the commencement of the meeting, to read over the scroll of the minutes?—I have seen it done sometimes, and sometimes not.

Do you recollect whether it was ever usual to correct them upon reading them over?—I think, I recollect one night, there were some corrections.

Are you acquainted with that gentleman?—I have had the honour to see Mr. Margarot many times, and been in his company.

Was he a member of the convention?—Yes.

Have you heard him speak?—Yes, I have heard him propose motions.

Did you ever see him act as chairman?—I cannot recollect to a certainty, whether he was or not.

Do you recollect any motion in the convention with respect to a union between England and Scotland?—I recollect the union with the societies of the Friends of the People in England.

Read that.—[Reads.] Margarot moved, that a committee be appointed to consider.—I do not recollect that.

Whose hand-writing is it?—I believe it is Mr. Aitcheson's.

You recollect there was such a motion?—Yes, that there was a union to take place between the English societies and the Scotch.

Do you remember any motion being made of a convention of emergency?—Yes.

Do you remember any thing about the purpose of that convention; of the events in which they were to meet?—To remonstrate to parliament against a bill, such as a convention bill.

Were there any particular persons who made a motion respecting it?—I believe it was made by Mr. Callender.

[Reads Mr. Callender's motion.]

Do you recollect that that motion was made?—Yes, it is my hand-writing.

Do you remember the events that were to happen?—That, in case of a convention bill, they were to meet in order to draw up a remonstrance to parliament.

Was any other event mentioned? any thing about the Habeas Corpus act?—I do not at present recollect.

Do you recollect any thing about a foreign invasion, or any thing about foreign troops?—Yes, about the Hessians and Hanoverians being brought over.

You spoke about Mr. Callender's motion: when was it taken up? the next day?—I cannot say.

Was the convention used to take notice of the motions at the time they were made, or did they lie over?—They generally laid over.

Was that motion of Mr. Callender's taken up afterwards?—I cannot say.

* See the lord advocate's observations on the depositions of this witness, on the trial of Skirving, *antè*.

Was there any debate about Mr. Callender's motion respecting the convention bill? and, recollect yourself before you give an answer. —I cannot be particular.

Were there any amendments proposed to that motion?—I believe there were.

What resolution was come to in consequence of the amendment?—I do not know particularly; I do not recollect.

Is that your writing?—Yes. [Reads.] Citizen Sinclair read the amendments upon citizen Callender's motion;—and then there comes some other person's writing;—and, it was agreed, that the house should resolve itself into a committee, to consider of the amendments proposed; the convention being resumed, and the amendments being read over, the members stood upon their legs, and solemnly and unanimously passed the following resolution.

Now recollect yourself, and tell us what passed at that time. Was it a resolution upon citizen Callender's motion?—Yes.

Now recollect what that motion was.—I cannot tell.

Look if it is mentioned there?—No, there is a blank page follows it. The resolution then passed, was reserved to be entered till the end of the minutes.

Lord Advocate.—It is very material that the jury should take down these words; for it is that upon which I shall found a very material part of what I shall have to say to them. Repeat it again.

I think the resolution that was then passed, was left to be entered at the last part of the minutes.

Look, and see if you find any more blanks?—I believe there are not. [Looks over the minute.] Yes, here is a blank of four lines.

Do you remember any proposal being made about burning any part of the written evidence, or destroying any motion or resolution the convention had come to?—No, I do not recollect.

Do you know Mr. Aitcheson?—Yes.

Do you recollect any objection being made by him to burning or destroying any resolution that they might have come to?—No, I do not.

Do you recollect any other person, a member of that convention, objecting to that measure?—I do not recollect any such thing.

Mr. Burnett.—Do you remember a motion being made for a secret committee?—Yes.

Mr. Solicitor General.—Who was it that proposed that motion, which passed solemnly and unanimously?—I cannot say.

Did the members all stand up when that motion passed so solemnly?—I do not recollect; but I should suppose so, from what is written here.

Do you remember any thing about declaring before God and the world, any thing?—I cannot say.

Do you remember any thing that was said about calamitous circumstances?—No; there was a resolution in case of a convention bill.

Do you remember any thing about paying no regard to such an act if it passed?—I never would agree to that.

Do you remember any speech or motion being made as to what the convention were to do, upon the meeting being dispersed?—If they were dispersed, they were to meet in another place.

Who was it that spoke with regard to that? did Mr. Margarot say any thing, or make a speech upon that subject? recollect yourself.—I cannot recollect.

Was it debated? Was there any difference of opinion upon that subject?—I cannot recollect.

Do you remember any motion being made with regard to it?—I believe there was.

Was it Mr. Margarot that made the motion?—I am not very certain whether he did or not, but I rather suspect he did.

Look at that paper [a motion for appointing a place of meeting]. Did you ever see that paper before?—Yes, in this court.

Do you recollect such a motion being made, and if Mr. Margarot was the person that made it?—Yes.

You said some time ago that you acted as clerk in the Gazetteer-office, and that your brother took notes in short-hand of the debates in the convention; now were they printed?—My brother took the notes.

Did you read them?—Yes, after they were printed.

So far as you yourself read, were they accurate?—They were pretty exact.

Was any thing said, so far as you remember, in the printed paper which had not passed in the convention?—I cannot say.

Was the statement given in the Gazetteer accurate of those motions and resolutions which you yourself heard?—I believe they were.

Do you recollect any speech by Mr. Margarot, or any body else, in which spies were mentioned?—No, I do not.

Who is the manager of the Gazetteer?—Mr. Scott.

This is a paper which is printed in the Gazetteer-office, I suppose?—It looks like it.

Is it a copy of the Gazetteer?—Yes.

George Ross cross-examined by Mr. *Margarot.*

Are you a judge of sedition?—I do not know what sedition is.

Have you any idea of treason?—Yes, I have.

What is your opinion of loyalty?—Loyalty is certainly to be true to the constitution of the country.

Have you ever seen any thing in my behaviour of a seditious tendency?—I do not know what sedition is; if you will tell me what sedition is, I will tell you.

That is a difficult thing; it seems nobody is agreed upon that here. Have you ever seen me behave in an outrageous, indecent

manner?—No; you expressed a wish to have grievances redressed.

Did I ever express a wish to overturn the constitution, or bring it back to its original purity?—To bring it back to its original purity.

Did I ever express a wish to throw every thing into confusion, or to obtain a reform in parliament? — That was what you always wished, to petition for a reform

Was my behaviour consonant to my professions in that respect?—Yes.

Have you ever seen me drunk?—Never.

Have you ever seen me in a passion?—I never did.

Have I ever had any revising of what has here been called the Minutes of the Convention in the office of the Gazetteer?—Never that I know of.

Among your ideas of the convention of emergency, did you imagine that that convention was to proceed to open force, or rather that it was to meet to deliberate?—To meet and to petition parliament for a redress of grievances.

You heard me, it seems, mention spies; did I ever express any fear of them?—No, I do not recollect hearing you mention spies.

I understood that you said so?—No.

Did you ever see any thing in the convention but what was perfectly peaceable and orderly?—I never saw any member behave disorderly or unpeaceably.

Were there not some regulations drawn up for the more orderly regulation of the committee? Was not that the business which we first set about?—I do not recollect exactly; but I think there was a committee of regulation.

The question I am going to put, will require your recollection and the attention of the jury. Have you ever heard any man declare himself my enemy?—I have heard several people declare themselves enemies to us as the British convention, but I cannot condescend to recollect any particular person.

Were you in the sheriff's office the same day that I was?—Yes.

Did you hear me converse with any of the messengers there?—I recollect being in the sheriff clerk's chamber when there were some messengers there; one of them and you had some words.

What did he say?—I do not recollect the particular word he said, but I know he said something which I thought improper at the time; I think it was one Lyon if I recollect right.

You cannot recollect what that man said?—No.

What was the subject of the dispute; you say there were words passed between us?—I believe the substance of it was his manner of seizing you; that he would not show you the warrant he had to take you up, or something of that.

And have you entirely forgot his expression?—Yes.

You have been asked about burning or destroying a motion. Did you ever hear me say any thing to that purpose?—No.

Did you say I was chosen a member of the secret committee?—I cannot say.

Did that secret committee ever act to your knowledge?—Not that I know of.

Have you seen me act as preses or chairman?—I am not very certain.

What is the business of a president of the convention?—To keep order.

Is he merely to regulate the behaviour or the speech of the convention?—Merely to regulate the behaviour of the convention.

His powers go no farther?—No.

It appears that the blank that is left in the minutes, that the writing just before it is your hand-writing?—No; that was another blank for four lines.

William Ross sworn.

Mr. *Burnett* —What profession are you of?—Clerk in the Gazetteer-office.

Were you a member of the meeting of the Friends of the People?—Yes.

Were you a member of their society when it got the name of the British Convention?—Yes.

Was Mr. Margarot a member?—He was there, and I understand him to be a member.

Do you know who acted as secretary to the committee?—Mr. Skirving.

Had Mr. Skirving any assistance?—I have seen my brother taking notes.

Did you ever take notes?—Never as assistant to the secretary.

And what was your reason for taking notes?—For my own amusement, and for publication.

Do you write short-hand?—Yes.

Did you take them in short-hand upon any occasion?—Yes.

Recollect, if what you took down, was an accurate statement, as far as your abilities went, of what passed in the convention?—I do not know whether it was an accurate statement: I did not make it wilfully not inaccurate; I was taken with a cold, and did not hear well.

Lord Justice Clerk.—You wished to make it accurate?—I did not wish to make it inaccurate.

Were they afterwards published in the Gazetteer?—Yes, from the notes that I took I drew out an account, which was published in the Gazetteer.

Does it consist with your knowledge, that the minutes were read over to the convention, the next day after?—No.

Had you occasion to revise your notes in the Gazetteer after they were thrown off.—Yes.

Did it appear to be an accurate statement of what had passed in the convention?—Exactly, as far as I recollect.

Have you ever had occasion to see the scroll of the minutes of the convention? should you

know them again if you should see them?—I have seen them lying there.

Should you know your brother's handwriting?—Yes.

Was Mr. Callender a member of the convention?—He used to attend there.

Did you ever hear any thing of a motion made by him respecting the convention bill?—I recollect such a motion being made in the convention.

Whom was it made by?—I am not certain.

Do you remember hearing a debate upon the motion respecting the convention bill?—I recollect there was a debate upon that motion, but I do not recollect the particulars.

Do you remember any thing mentioned in that debate respecting a convention of emergency?—I think it was at the same time that the convention of emergency was mentioned.

Do you remember any other event in which case it was to take place?—I do not recollect.

Do you remember any thing having been said about a foreign invasion in that debate?—I believe there was something said about a foreign invasion.

Are you sure nothing was said as to a French invasion?—No.

Was any thing said about Hessians and Hanoverians?—I do not recollect that; it was in general troops, and foreign invasion.

Was any thing said of foreign troops landing in this country?—I believe there was, but I cannot say I heard mention made of both.

Did you hear of the Habeas Corpus act?—Yes, on the same occasion.

Do you remember any motion, or any speech having been made with respect to the dispersion of the meeting, and what was to be done in that event?—I recollect something being said about the dispersion of the meeting; that if they were illegally dismissed, the convention should meet.

Lord Justice Clerk.—Do you mean the convention of emergency?—I suppose it meant the members then present.

Do you recollect who it was that spoke with regard to the dispersion of the meeting?—A number of persons spoke, and I do not recollect who it was.

Did Mr. Margarot make a speech upon that subject?—I think he did.

Did you hear of any motion being made with regard to a secret committee?—Yes.

How many did it consist of?—I do not recollect the number.

Do you remember who made the motion with regard to it?—I do not recollect.

Was Mr. Margarot a member of the secret committee?—I do not recollect whether he was or not.

Look at that paper; did you see it in the convention at any time?—I never did.

Did you hear that motion made for a convention of emergency?—I recollect a motion to that purpose having been made.

Do you remember any thing of a secret committee being appointed?—Yes.

Was Mr. Margarot a member of it?—I do not recollect.

[Shows him three Gazetteers.] Look if they were published at your office?—Yes.

Lord Justice Clerk. Were these publications known to the convention?—They were to individuals in the convention.

Was it never mentioned in the convention that it was to be published?—It was mentioned that an account of the proceedings of the convention was to be published, but I do not recollect that that was in the convention.

Lord *Eskgrove.* Was there no resolution in the convention to support that paper?—There was some motion to that purpose, but I do not recollect any resolution being come to upon it.

William Ross cross-examined by Mr. *Margarot.*

You took notes for the purpose of publishing them in the Gazetteer. Did you ever submit these notes to me before they were published?—I never did.

You say you were as accurate as possible?—I do not know that I was inaccurate.

Are you hard of hearing?—I was at that time, and still do continue a little so.

Was there ever any talk in the convention of our convention of emergency being for the purpose of assisting the French if they invaded this country?—I never heard of such a thing.

Did such a thing ever enter your head?—No.

Nor any body else, in their senses, I believe. You have heard of a secret committee. Do you know whether that secret committee ever did any thing?—I never heard of their doing any thing.

What was the mode of appointing committees?—The general mode was, that they were appointed by the sections.

Was there not among the regulations of the convention, one which expressly enjoined on such members, as should be chosen to any office, to accept of the same; that is to say, that it barred them a refusal?—I think I have a recollection of that, but I am not positive.

You say I made that motion for the convention of emergency. Did I propose to repair to that convention armed?—I did not hear any thing of that sort.

Did I propose carrying on, by that means, any correspondence with any foreign enemy, from whom an invasion was to be expected?—No.

Was the Gazetteer submitted to the convention before it was published?—That was impossible.

Then they did not superintend the publication of the Gazetteer?—Surely not.

Did they ever order the printing of the Gazetteer?—No.

At whose expense was it carried on?—At the expense of the publisher, Mr. Scott.

The convention never furnished any thing towards the expense of the printing?—Never a farthing.

Then it was carried on totally independent of the convention?—I understood it to be so.

It seems that you recognize the scroll of what is here denominated the Minutes of the Convention; could you swear to it?—No, because I never saw it till I saw it in the sheriff's chamber. I have seen a scroll of minutes lying upon the table, but I never perused them.

Does there appear to be any alterations, or interlineations in that pretended scroll?—I have seen the pen drawn through some words.

It appears then, that you know nothing at all about that scroll?—No, I never perused any of it till I saw it in the sheriff's chamber.

When the illegal dispersion of the convention was spoken of in the convention, did you thereby understand a dispersion of the convention in a constitutional manner, according to the laws of the land, or did you understand a dispersing of it by force, unaided by laws?—I understood the dispersing of it without law.

Lord Advocate.—Did you understand, that, by the words illegal dispersion, was meant any dispersion by the magistrates of Edinburgh, or the sheriff of the county?—I understood it meant a dispersion without any law.

Mr. *Margarot.*—What is your opinion of magistrates? are they to act according to law, or do you apprehend there is a code of laws in this country which is to be the rule of their conduct?—I understood that the magistrates were to act according to law; and that if they did disperse the convention, it would be without law.

[*John Wardlaw* was sworn, but appearing to be intoxicated, was ordered to withdraw.]

Lord Advocate.—If we may judge from the appearance of this man, he is in a state of intoxication, and certainly very unfit to be examined in a court of justice, as a witness; I should therefore, were his evidence never so material, avoid examining him; but before I agree to give him up, I wish to be satisfied whether it is the real state of the man at this moment, or whether, which is possible, it may be a mere pretence, and an appearance put on by himself, on purpose to avoid being examined; if your lordship will allow him to to be called back again, and put such questions to him as may be deemed proper, that the jury and your lordships may be satisfied whether he is so or not.

Lord *Henderland*, to the Macer.—Did you observe any thing particular in the appearance of this witness in the morning?—He appeared to be the same in the morning that he is now.

[The witness called in again.]

Lord Advocate. Were you inclosed this morning, at the same time, with the other witnesses?—Yes.

Have you got any provision since you went into that room?—Yes.

Have you got any liquor?—Yes.

Any considerable quantity?—None at all.

Lord Advocate. He says he is not in liquor, therefore, we may proceed to examine him*.

Were you a member of the British convention?—Yes, I had the honour to be a delegate.

Did you frequently attend the meetings of that convention?—Yes.

Did you ever assist as secretary there, upon any occasion?—Never.

Did you write any minutes of the meeting at that time?—When I was called upon to do so, I did.

Did it happen at any time?—Yes, once.

Have you seen the panel at any of those meetings?—Yes.

Did you ever see him act as preses, or chairman at this meeting?—No.

Look at that, and see whose hand-writing it is?—I believe it is my writing.

Who gave you that motion?—I wrote it myself.

Who proposed it to you?—I proposed it myself.

Did you write it by desire of any body?—No.

What is your profession?—A writer.

Lord Advocate.—Are you in any writing-chamber?—I am a writer, and that is enough.

Lord *Eskgrove.*—In whose chamber do you write?—That is not the question, my lord; you do not speak to the point; you must speak to the point, my lord

Lord Advocate.—Did you second the motion?—Yes, I counted it a laudable and proper motion.

Who desired you to second it?—I did it myself, of my own free will.

Did Mr. Margarot report that motion?—I believe he did; because it was his motion; and I wrote it, and seconded it.

Did you see Mr. Margarot sign it?—I do not recollect his signing it; I do not recollect whether he wrote it or not. Mr. Margarot is a man of courage, and a man of honour, and a man of virtue; and a man that would not deny his word—by God.

Lord Justice Clerk.—What is that you say?—I said he would not deny his word.

Lord Justice Clerk.—But you said something else?—I said by God.

Lord Justice Clerk.—He is either drunk, or affecting to be drunk. My own opinion is, that he is affecting to be drunk; and, supposing he is not affecting drunkenness, he ought not to get drunk, knowing that he was to be called here as a witness.

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* See in this volume, *post*, the second examination of Thomas Dunn, on the trial of Thomas Walker and others, for a conspiracy, A. D. 1794.

Lord *Henderland*.—I move that he be committed to prison for a month.

He was committed.

Samuel Paterson sworn.

Mr. *Solicitor General*.—Are you a member of the British convention?—Yes, of the convention that sat on the 19th of November.

Was it called the British convention?—It got that name afterwards.

You were acquainted with Mr. Callender, who was also a member of that convention?—Yes.

Were you ever present in the convention, when a motion was made by him?—I cannot recollect.

Do you remember a motion being made of what the convention were to do in case of a bill being brought into parliament like the convention bill that passed in Ireland?—I was not there when that motion was discussed.

Were you ever present when any motion of a similar nature was discussed?—No.

Were you ever present at any time when the motion was made respecting the illegal dispersion?—No.

Is that paper your hand-writing?—Yes, it is not only signed by me, but the body of it was drawn up by the section to which I belonged, and was by me transmitted to the convention.

Samuel Paterson cross-examined by Mr. *Margarot*.

This motion or paper, or whatever it is, was drawn up in your class and brought to the convention. Was it ever read in the convention?—All that I can say for this paper is, that it was drawn up by the class to which I belonged, and I was informed that it was delivered to the preses for the time being, and I was not there that night; I was only there four nights altogether, and perhaps, once or twice only [reads the minutes.]

Lord Justice Clerk.—Did you give it in yourself?—I am not certain; there was always a return made every day of a new preses for the succeeding day.

Mr. *Margarot*. And you cannot tell to whom it was delivered?—It was delivered to the secretary I suppose.

How are you certain it was delivered, if you were not present at the time of the delivery?—I am not certain of it.

Gentlemen, pray attend to this: by what authority did the classes or the sections, or whatever they may be thought proper to be called; by what authority did they draw up any motion or paper? Was it by the express command of the convention, or was it an authority that they assumed of themselves, as meaning to send their intentions, their opinions, to the convention there to be discussed?—It was generally by the authority of the minutes from the convention the preceding night; but that paper was, as far as I recollect, drawn up without any minutes having been sent by the convention.

You say this was drawn up by the class without any interference of the convention?—As far as my memory will charge me, that was the case.

You were originally a member of the Friends of the People, and then a delegate to the British convention, and I understand you have seceded from them?—Yes.

I must beg to ask one question. Does a reform in parliament appear less necessary to you at present than it did then?—I must appeal to the Court whether that is a proper question or not.

Lord Justice Clerk.—We have given full scope to the panel, because he is a foreigner; but when a witness refuses to answer a question that is not proper, we are bound to say he need not, unless he chooses.

Mr. *Margarot*.—I will not press upon a sore place. Do you know that that was read in the convention?—I do not know; I was not there that night when the question was debated.

Lord Advocate.—With the declaration of the panel, we shall now close the evidence on the part of the prosecution.

The declaration of the panel read.

Maurice Margarot, merchant in Mary-le-bone, No. 10, High-street, London; being examined and interrogated, whether he was a member of the British convention of the delegates of the people, associated to obtain universal suffrage and annual parliaments, assembled in Edinburgh; declares, that he does not acknowledge the legality of a private examination, and declines answering the question; and being interrogated from what place or district he is a delegate to the said convention, declares he declines to answer the question, for the reason above specified; and being interrogated whether he has made any motions in said convention, and of what nature, he declares he must decline answering the question, for the reason above specified. And being shown the paper, signed Maurice Margarot and John Wardlaw, of the tenor following: that the moment of any illegal dispersion of the present convention shall be considered as a summons to the delegates to repair to the place of meeting, appointed for the convention of emergency by the secret committee, and that the secret committee is instructed to proceed without delay to fix the place of meeting.

(Signed) Maurice Margarot.
John Wardlaw.

—And being asked, if he made any motion in the convention last night, or any other time, must decline answering the question, for the reason above-mentioned. And being interrogated if he came to Scotland at the invitation of any person or persons in this country, declares he must decline answering this or any other questions, for the reason above specified: and this he declares to be truth.

This declaration was made and read over to

him, in the presence of William Scott, of Harry Davidson, and Joseph Pringle.

(Signed) William Scott.
Harry Davidson.
Joseph Pringle.

Lord Justice Clerk.—Now is your time, Mr. Margarot, to bring forward your exculpatory proof.

Mr. *Margarot.*—How can I bring forward my exculpatory witnesses, when they are not present, and I am not granted a caption for them?

Lord Justice Clerk.—Are there none of them here?—Yes, my lord; I will first call the sheriff substitute.

Evidence for the panel.

Harry Davidson sworn.—Examined by Mr. *Margarot*

When I was apprehended and brought before you, did not I make objections with regard to the legality of the proceedings?—You did.

Did not I complain of the treatment I had received in having been taken out of my bed at 7 o'clock in the morning, and kept in a room where there was not even a chair to sit upon, until five in the afternoon, as though I had been a criminal and a felon? You mentioned these circumstances, and I think my answer was, that I was exceedingly sorry for it, but that they had not been communicated to me, or I should have taken care that you should be better accommodated.

Did I not state to you the illegality, as I apprehended, of arresting a man without even showing him the warrant?—You mentioned that circumstance.

Did I not promise you that I would enter a process against those proceedings?—Yes.

Have I been as good as my word? have you been served with a protest?—Yes I have.

Right Hon. *Thomas Elder*, Lord Provost, sworn.

All I mean to ask you, my lord is, whether you could discern any confusion, tumult, or riot, at the meeting at Laing's workshop on the 6th of December, at your entrance?—There was no other riot that I know of than what was occasioned by the magistrates interfering.

Then it was the magistrates caused the riot? very well, my lord. Were you acquainted with the business that the convention were upon that night?—No, I know nothing farther than that it was a convention for illegal purposes.

Do you apprehend, my lord, that petitioning parliament is illegal?—Does your lordship think I need answer that?

Lord Justice Clerk.—I think not.

Mr. *Margarot.*—Were you not told that the intention of the meeting was, to consider of an address for a reform in parliament, by petition to the king, or to that parliament?—I certainly heard some such thing.

Whether, upon the preceding night when I was absent, when you interrupted the convention, you were not likewise told, that the business they were going to proceed upon was, whether it would be best to petition the king, or the parliament for a reform?—That I was told by Mr. Skirving.

Mr. *Margarot.*—Now, my lord, comes a very delicate matter indeed. I mean to call upon my lord justice clerk, and I hope that the questions and the answers will be given in the most solemn manner. I have received a piece of information which I shall lay before the Court, in the course of my questions: first, my lord, are you upon oath?

Lord Justice Clerk.—State your questions, and I will tell you whether I will answer them or not; if they are proper questions I will answer them.

Did you dine at Mr. Rochead's at Inverleith in the course of last week?

Lord Justice Clerk.—And what have you to do with that, sir?

Did any conversation take place with regard to my trial?

Lord Justice Clerk.—Go on, sir.

Did you use these words; what should you think of giving him an hundred lashes, together with Botany Bay? or words to that purpose?

Lord Justice Clerk.—Go on; put your questions, if you have any more.

Did any person, did a lady say to you that the mob would not allow you to whip him? and, my lord, did you not say that the mob would be the better for losing a little blood? These are the questions, my lord, that I wish to put to you at present in the presence of the Court: deny them, or acknowledge them.

Lord Justice Clerk.—Do you think I should answer questions of that sort, my lord Henderland?

Lord *Henderland.*—No, my lord, they do not relate to this trial: questions as to facts, which are at all material to the charges contained in this indictment, my lord justice clerk is obliged to answer, but not otherwise.

Lord *Eskgrove.*—What may have been said in a private company, cannot in any way affect this case as to the panel at the bar: it certainly cannot throw any light upon the subject: my lord, I have concurred in allowing this gentleman, who is a stranger from London, to put such questions as I never before heard of in a court of justice, where, my lord, every subject of this country, the meanest and the poorest that stands at that bar, may have the assistance of counsel learned in the law. If his situation was such that he could not afford it, he might have got it by the authority of this Court, which would have prevented many things that were stated upon the relevancy. My lord, there has not been a question put to your lordship that could at all avail Mr. Margarot as to his innocency in this trial, and your lordship very properly waved answering them. I am of opinion that you ought not to answer questions of

that sort, which cannot involve the fate of the trial; I therefore think that it is not consistent with the dignity of this Court, and cannot be beneficial to the panel.

Lord *Swinton*.—Any thing that may tend to exculpate him, or alleviate the crime charged against him, had he proposed questions of that sort, not only my lord justice clerk, but every one of us must have answered them by the laws of the country; but the answer to none of these questions can either tend to exculpate him or alleviate the offence of which he is accused. My Lord, not one of them are proper, not one of them are competent, and ought not to be allowed to be put; and were he not a stranger to this country, I should look upon it as an insult offered to this Court.

Lord *Dunsinnan*.—The panel is allowed to adduce what exculpatory witnesses he thinks proper; your lordship well knows that by the constant rule of this court, before the panel proceeds with his exculpatory proof, he is called upon to state the nature of that proof: he has put questions to your lordship, and it appears to me that no answer to those questions could in any degree tend to exculpate or alleviate the charges against him.

Lord Justice Clerk.—Have you any other witnesses?—It is needless, my lord, when I am told that the answers to such questions would neither exculpate me nor alleviate the charges against me, but it would have gone to show the jury that I was pre-judged before my trial came on; and I did mean indeed to have followed it up by another question, had you been on your oath; but as you are not, I will not put it.

Lord Justice Clerk.—Have you any other witnesses to adduce?—Yes, my lord.

Charles Stewart called.

Lord Advocate.—For what purpose do you call him?

Mr. *Margarot*.—To ask him a question concerning something that appeared in one of these papers, the Edinburgh Herald.

Lord *Abercrombie*.—That is not a paper libelled upon.

Mr. *Margarot*.—No, but it libels me and the friends of a reform in parliament; it is a comparison between the friends of a reform in this country, and the anarchists in France, and I want, but I do not see why I need tell my wants, unless he is to be called; I want to know from whom it was that he received the original of this letter; that is a fair question that I have a right to ask in any court of justice, and it is a question that ought to be answered: it is a paper that has thrown an odium upon the friends of reform.

Lord *Dunsinnan*.—This would lead into a very extensive field, if the panel be allowed to go into an investigation of all the writings that have been published, that have thrown, as he says, an odium upon the friends of reform, and there is nothing founded upon it against the panel.

Lord *Henderland*.—This paper is no part of the evidence produced against Mr. Margarot, otherwise he might be entitled to inquire by whom it was put in; but to go into a question of every thing that has been said for and against the Friends of the People in the newspapers, is totally irrelevant to this trial; for if Mr. Margarot has been injured in that respect, the law is open to him, not on this trial, but on another occasion, and it can have nothing to do with this trial.

Lord *Swinton*.—By an act of 1748, it is the prisoner's duty by that act of parliament, to give in, the night before the trial, or sometime before the trial, the facts upon which he is to found his defence, and he shall be allowed to prove nothing in his defence, but what is contained in that list of facts; but if what he has now stated would be material to his defence, I am sure the lord advocate would allow him to prove it; but there is nothing here that could tend either to exculpate or alleviate; it would lead us into every thing that has been wrote, *pro* and *con*. upon the subject, and who it was that gave the foundation for it, and therefore I conceive it not regular.

Lord *Eskgrove*.—I am of the same opinion; I think it can be of no avail to him upon the face of the earth.

Lord Justice Clerk.—It is very true, my lord, that there is a statute of the late king, and I think it was a very proper rule that was adopted by that statute, and I am sorry that it is no more attended to than it is, and I should be sorry to deny this panel any thing that could avail him in his defence, and he might have had the advice of Scots lawyers, or agents, and therefore I am of opinion, that it would only tend to criminate other people who are not here, or are not put upon their defence.

Mr. *Margarot*.—Then it is needless saying any farther upon that; it would only have tended to clear up the minds of the jury, who might have received unfavourable impressions, and which might have been done away by some questions put to the printer; but which, perhaps, some people would wish to see encouraged.

James Calder sworn.

Lord *Henderland*.—What business are you?—A friend of the people.

Do you live upon that?—I live upon my father Donald Calder, merchant in Cromartie.

What are you?—[After some hesitation] I am a student, and attend the university here.

Examined by Mr. *Margarot*.

Were you ever present at any of the meetings of the General Convention of Friends of the People in 1792, and the beginning of 1793?—Not in 1792, but I was a member of the convention of April 1793.

What is your opinion upon the views of those conventions?—I consider them to be perfectly legal.

What was the purpose of their assembling?—To obtain a reform in parliament.

Were you ever interrupted in those meetings by the civil magistrates?—No, as far as I know, I never was.

Did you ever hear in the course of your communications with other people, that the magistrates deemed those meetings seditious and illegal?—No, I never did.

You do not know of any members of those conventions ever having been apprehended, in consequence of their being members of those conventions?—No, I never did.

Were you present at any of the meetings of the last British convention?—Yes, I was occasionally.

Was there any material difference in the proceedings?—I certainly know of no difference; there might be some little difference in their mode of expression as to the objects they had in view.

Was the mode of proceeding in those objects nearly the same?—They were the same as far as I know.

Were the one and the other equally void of violence, tumult, or sedition?—I never saw any thing of the kind.

Were any seditious doctrines ever held or authorized in the British convention?—Nothing that I should call seditious myself, or that I ever thought seditious.

Did you imagine it to be a part of the people's right to meet in that manner, to petition parliament, or obtain a reform?—I always understood so.

Were you present when I was said to have made the motion with respect to the union between Scotland and England?—I do not recollect the time the motion was made; but I think I remember a motion of that description.

What was the intention of that motion, if you can recollect any thing of it? as far as you could infer from the words that it was expressed in, was there any thing in it of an evil tendency, with regard to the king and government of Britain?—As far as I recollect, it was a general sort of a plan of operations, between the societies in England and Scotland.

To produce what end?—To establish a correspondence between the societies of England and Scotland, upon a constitutional mode of proceeding to petition the legislature.

Were you present when (as he is called here) citizen Callender made a motion respecting a convention bill?—I do not recollect it; I do not think I was present at the time that motion was made.

But you understood the nature of that motion, to have respect to the time, when a convention bill should be brought into the House of Commons: did you understand that the convention of emergency, which was to take place on the introduction of such bill, or rather whether the delegates of the convention of emergency were to assemble, immediately upon the introduction of such bill, or wait till it had passed in the House of Commons?—They were to assemble, as far as I recollect, upon the introduction of such a bill.

I suppose that you thought that this convention was to oppose that bill?—Yes.

In what way?—In a legal and constitutional manner, by petitioning parliament, or by counsel.

Had you any apprehension that these delegates meant to employ open violence?—I never heard any thing of that kind.

Were there any warlike preparations for that purpose?—No.

Was there any sum subscribed for that convention?—No.

Were any extraordinary measures taken to give strength to that convention, which the British convention did not then enjoy?—No.

Were you present at the meeting at Laing's?—Yes, I was.

What did you hear the sheriff-substitute say?—I heard him desire them to disperse.

What reason did he give for the dispersion?—He said he had orders to disperse them;—that it was an illegal and unconstitutional meeting.

You are certain that he said he had orders?—Yes, I am very sure of that.

Was he not informed of the constitutional manner in which we were proceeding to debate on the question respecting an address to the king, or petition to parliament, for a reform?—As far as I recollect he was, though I cannot say by whom, but I believe it was Mr. Skirving.

Were you there the preceding night, when the lord provost came to disperse that meeting?—I came in about the time that he came.

Were they peaceable before the lord provost came?—I was not there long before.

Were you there when he came in?—Yes.

Was there any confusion after he came?—No.

Did you hear it explained to the sheriff-substitute when he dispersed them at Laing's, what was the nature of the business of the evening?—Yes, I answered that question before.

When force was said to be necessary to disperse us, after the token of force given by the sheriff to the chairman, was any farther force necessary?—No; after Mr. Margarot came out of the chair, somebody called Mr. Gerrald to it, and he took the chair; and we did not disperse till he went to prayer, and then we went away.

Was it actual force that dispersed us, or an ideal force, a submission to orders that we did not resist?—A submission to orders; but I looked upon the order of the magistrates to be force.

But the members of the British convention, when so dispersed, retired peaceably, did they not?—Yes.

John Clark sworn.—Examined by Mr. *Margarot.*

What are you?—A mason in Edinburgh.

You were a member of the British convention?—Yes.

With what view did you join that convention?—I joined it with a view to obtain a reform in the representation of the people.

Were you convinced in your own mind that the attempt to obtain a reform was legal and constitutional?—I thought so, or I would not have been a member of it.

You are on your oath, and I desire you to answer this fairly; if you had found that the members of the British convention had departed from that constitutional line in which they set out, and in which they were acting when you joined them, would you have abandoned them?—If I had thought they had deviated from that constitutional line, I certainly would have abandoned them, no doubt of it; but I have not found it.

You have not then abandoned them yet?—No; not so long as they are constitutional.

What was the tenor of the behaviour of the convention? was it peaceable behaviour, and orderly, or riotous and tumultuous?—Peaceable and orderly.

Was any seditious doctrine encouraged or promulgated there?—I am at a loss to know what seditious doctrine is now, and I cannot answer that question; I did not understand it to be seditious.

Was any step proposed at any time that you might think unconstitutional, from your knowledge of the constitution of the bill of rights, and of the claim of rights?—No, not any thing.

What was the motive of the convention, for endeavouring to promote a union between Scotland and England?—I understood it was to promote a union between those societies that wished for reform, that they might unite in adopting the constitutional means to obtain it.

You never harboured any idea that it was for a sinister purpose, did you?—No.

Did you ever understand that if the French landed in England, the convention were to meet them?—Quite the reverse.

Do you know of any member of the British convention having any correspondence whatever with France, directly or indirectly?—None.

Were you present at the time the lord provost dispersed the convention on the 5th December?—No.

Were you present at the time the sheriff substitute dispersed them on the 6th December?—I was.

Before the sheriff-substitute came in, how was the convention with regard to order, peace, and decorum?—It was perfectly orderly, but I was a very short time in before the sheriff-substitute came.

What did you understand to be the subject of the debate that night?—There was a motion about another petition to parliament.

What was said to the sheriff when he attempted to disperse us?—I believe he was told that it was a peaceable, constitutional meeting, and that his dispersing us was illegal; we were met for the purpose of petitioning parliament, and were entitled to do so by the constitution.

What was his reply?—That he behoved to obey his orders; that he did not come to argue, but to obey his orders, to disperse the meeting.

You are certain he mentioned the words, his orders?—I think I am pretty certain of that.

Did I as chairman require some sign of force from him?—You did.

What sign of force did he make use of?—He touched you by the hand, and said, Come out, and you said, No, it must be a little more than that, and then he took you by the arm and gently pulled you out, as I would a friend, and then you came out; then Mr. Gerrald took the chair, and it was moved, that we should dissolve in the ordinary way, with prayer, upon which Mr. Gerrald went to prayer, and we came away.

Do you apprehend there was any idea of resistance, or any attempt to resist, or that any individual showed a wish to resist?—None that I know of, it is distant from my idea.

Do you apprehend that the general apprehension was, at that time, that the sheriff was acting unlawfully?—I presume it was, but I cannot say what they thought.

However, they retired peaceably?—Yes.

And no riot ensued?—No.

No drunken bout ensued that night, of the Friends of the People?—None, to my knowledge.

John Clark, cross-examined by Mr. *Solicitor-General.*

You have been talking about the bill of rights and the claim of rights, where have you read them? in what book is it to be found?—I do not recollect.

Can you tell us any thing about this claim of rights, any of the articles of it?—I cannot tell the whole.

You have upon your oath told us, that there was nothing done in this convention contrary to the bill of rights, or the claim of rights; is the right of petitioning parliament one of the articles?—Yes.

Did you ever read any thing about illegal associations called by private authority, either in the bill of rights, or claim of rights?—I cannot recollect at present.

Lord *Abercrombie.*—Did you ever act as preses in the British convention?—When I was there as president, I was keeping order.

How often was that?—Only once.

Lord Advocate.—You were a member of the secret committee?—I was.

Who were the other members?—Mr. Margarot, Mr. Brown, myself, and the secretary.

Mr. *Margarot.*—Did that secret committee ever act?—Not that I know of.

Mr. *Margarot.*—I will, with the leave of the Court, lend you the claim of rights to read.

Lord Advocate—Did you ever read the Habeas Corpus act?—No.

Did you ever read the act of 1701, on wrongous imprisonment?—No.

Mr. *Solicitor-General.*—Is it a Scotch or an English act?—An English act.

Mr. *Solicitor-General.*—So that is your knowledge of the act of 1701?—Stop, I believe I am wrong, for the union took place in 1706.

*Lord Advocate.**—Gentlemen of the Jury;—You are called upon in the common and usual routine of your duty, to decide upon the truth of the indictment, which I have felt it my duty to prefer against the panel at the bar, who is styled, and calls himself in the paper which is termed a declaration emitted by him, before the proper officer, a merchant, residing in Marylebone in London; you, therefore, merchants of Edinburgh, are his equals, and a proper and competent jury to decide upon his guilt or innocence.

Gentlemen, I must again repeat the assertion I made this morning, at an early stage of our proceedings; that you sit here this night in the common course and ordinary routine of public duty, and that the accusation then made by the panel, in his speech, or rather succession of speeches,—not with much judgment or prudence, I think,—of your being a *packed jury*, is as gross as it is unfounded. I trust you know and feel, as I hope the country at large know and feel, that it is not in the power of the highest subject of this country, be his situation what it may, either here or in England, to *pack* a jury as this man has dared to assert, or to prevent the meanest criminal from obtaining, what the law and constitution of his country gives him,—a just, a fair, and an impartial trial. Something, if I charge my memory right, was also said by the panel, of my object being to impose upon, and mislead your understandings, and you were cautioned against my endeavours to do so. That observation, gentlemen, shall not deter me now from doing what still is incumbent on me on this tedious and fatiguing trial,—to address you to the best of my ability, and to the best of my understanding, on the voluminous evidence this day laid before you; to arrange it under as clear and distinct heads as I can, and to point out what I think are the necessary and unavoidable inferences to be drawn from it. The panel, if he thinks I attempt to mislead you, has a full and perfect right, both to say so, and when I am done, to point out and explain to you why he thinks so. I assert for myself, in the discharge of my duty as public prosecutor, a complete and perfect independence. You, gentlemen, must feel the same in the exercise of yours. Like you, I can only be influenced by the desire of doing my duty to the country, and a firm determination to follow the dictates of my own conscience. Whilst I do this to the best of my judgment and understanding, as you will hereafter do in forming your verdict, I care not what is said either by a criminal, in a moment of intemperance, or by persons without doors, endeavouring to attack the purity of our trial by jury, or to shake the confidence of the people of this country in this their most inestimable privilege. I deny that juries are packed, or that any instance has existed, or can possibly exist in this country, of so foul and gross a calumny being just.

Gentlemen, I am not without some apprehension, in consequence of a severe indisposition under which I have suffered, since I last in this place addressed a jury on a trial similar to this,—that I may not be able at this late hour of night, and in so crowded a court, to do, what is on all occasions my bounden duty, and which is in the peculiar circumstances of the country, at present more particularly incumbent on me, to state clearly to you the effect and import of that evidence now lying on the table, and from which so many passages have been read over in the course of the day,—that I may fail in placing it before you in a clear and distinct light, and in discriminating with the accuracy I would wish, on what part of the volume of factious, seditious and treasonable matter on your table you ought to dwell and rely upon; what you ought to reject and throw away. But I trust in some degree to the goodness of my cause. I trust still more to the understanding of the jury, and I trust something in that feeling of regard to my country, and that spirit which a good and loyal subject ought and must feel, in being still enabled to make out such a case from the evidence before you, as must impose upon you the severe, but just task of returning a verdict of guilty against the person now at the bar, upon evidence the most solid, convincing, and conclusive.

Gentlemen, the panel at your bar stands charged with sedition. Upon that subject we have had to-day much discussion; and we have had, to my surprise, a great deal of igno-

* The system of misrepresentation, of which notice has already been taken in the preceding case, p. 536 was resorted to by the publishers of this trial, in the account given by them of the lord advocate's address to the jury. On the present, however, as on the former occasion, lord chief baron Dundas has enabled me to present to the reader an authentic report of his speech, in which the misstatements which have heretofore appeared are corrected.

rance of what it is, professed by persons who ought to have been the very last to make the profession. Men who, at the same time, hold themselves out to their fellow subjects as persons so well advised and informed, so fully instructed in all that regards the whole law and frame of our constitution, as to be entitled in this British convention to teach parliament itself what is the reform, qualified to substitute, in place of the one we enjoy, something far better,—who have audaciously assumed to themselves the important task, and still more important character, of being able to improve that inheritance which our ancestors in their wisdom, and on the gradual experience of progressive centuries, have established amongst us, and left us to enjoy as the best and wisest which could be devised. It would have been well, I think, if, before they took to themselves such a character, they had begun by studying the law of their country a little more closely than they have done, ere they pretended to improve it, and bestowed some portion of their time in understanding at least the criminal law, which constitutes so prominent and proud a feature of the constitution of our country, before they professed themselves to-day ignorant of what sedition was, and their utter incapacity for the difficult duty they have presumptuously and criminally arrogated to themselves.

Gentlemen, it is at present unnecessary for me after what you have already heard, to refer you again to books of law on this subject. My learned friend who opened the case to-day on the part of the prosecution, traced *sedition* to the very earliest authority known, and acknowledged in the law of Scotland, the book of the "Regiam Majestatem," and if the panel at the bar, and his associates of the British convention, who as witnesses favoured us to-day with repeated professions of their ignorance of what the meaning of "sedition" was, had even only turned up the only book of criminal law which we lawyers acknowledge as of authority, namely, that of sir George Mackenzie, they would there have found a separate and distinct treatise, expressly defining the crime of sedition, and giving it its technical definition, as precisely as that of murder, falsehood, forgery, rape, or any other crime which stands on the list in our criminal jurisprudence. If any number, or assemblage of men, be their ostensible purpose what it may, either a reform of parliament, redress of grievances, or any other similar purpose, meet and assemble together by their own authority for the accomplishment of that avowed purpose; and if, when so assembled, they, in place of proposing legal and constitutional measures, for its attainment,—for instance, by petition to the king or the legislature, do on the contrary propose and adopt measures of a very different nature, and a very different tendency,—if, by aping and imitating the example, the language, and the forms of a French convention, a country with whom we are involved in war, they demonstrate their intention of following its footsteps in revolution and in blood,—if, as I shall prove to you must have been the case, their intention was, to overawe the legislature in the free and independent exercise of its functions, by combining, as far as they could, a majority of the people, to rise in arms and in rebellion against any measures which the wisdom of parliament might direct for the public security and safety, —if, in the event of that invasion from abroad with which the public enemy has menaced us, they, in place of resisting, were to assemble and join the invaders (for notwithstanding all the professions of the panel and his associates to the contrary this day in the course of the trial, such, in the sound construction of the evidence, and in common reason, I shall show is the only conclusion possible to be drawn from the past and uniform tenor of their conduct and language), then is the crime of which this panel is guilty, the crime of sedition, as clear and unequivocal as ever occurred in the criminal practice of this or any civilized country.

Such, gentlemen, is the view I entertain of the evidence this day laid before you. Such is the opinion I have formed of its import and tendency. My opinion, however, is not binding upon you. It is for you to consider the evidence, and form your own judgment: it is now mine to state to you the reason why I think you ought to concur with me in opinion, and to comment on those parts of it, which have mainly led me to that I now declare. You will give to my reasoning your best attention —You will lay your hands on your hearts and say, whether it is not the only, the plain, and the necessary deduction and inference which arises, not from any particular expression, circumstance, motion, resolution, or paper, but from a general and complex view of the whole, all tallying together, and bearing to that point only, and much more when compared with, and fortified by the parole evidence which was this day given in court, not without extreme reluctance by the witnesses adduced on this trial.

Gentlemen, the evidence is of two kinds, written and parole: the principal and chief part of it (and I say so, because it is the most certain and the most unerring) is, the written evidence arising from the minutes of this self-constituted convention; from the papers found upon Mr. Margarot, contained and referred to in the general inventory upon the table, and from three numbers of the Gazetteer, which in the sequel I shall show you to be completely brought home to this convention.

Gentlemen, the first question which you are to consider is, whether or not this meeting, from the 19th of November (for I go no farther back) till the 4th of December last, where the minutes stop—because we all know, and it is proved to-day, that the magistracy of this city, did, early on the morning of the 5th, apprehend these persons and seize

their papers;—the first question which you are to ask is this: Was it or not a meeting of a seditious nature? for if you are of opinion, that it was not a meeting of a seditious nature; if you should consider it in a different point of view, to what I humbly presume to do; that it was an innocent, fair, legal, and constitutional measure, it is in vain, superfluous, and unnecessary for you to inquire, whether the panel is a principal actor in that meeting; because no man can be found guilty of the proceedings of a meeting which a jury shall be of opinion, is within the pale of the law, and such as the laws of this country entitle any man to call together.

Gentlemen, something was said to-day in the course of this debate (if I may so term it), that was personal against myself, as a member of another convention; something was said with regard to the astonishing circumstance, of not bringing the borough reformers to trial in this court, something was said also with apparent marks of exultation on the part of the panel; that though three conventions of the Friends of the People had taken place in this city in the course of eighteen months past; no notice whatever was taken by the public prosecutor of any of those conventions, till, as Margarot, I think, stated, we took alarm, because we saw that he and his friends were in danger of opening the eyes of the people; and that it was not till we were alarmed, and that the eyes of the people were about to be opened, to the existence of those abuses, which it was their object to correct, that I (negligent in my duty before) brought this man and others his associates to answer for the offence.

Gentlemen, my answer is this: I desire not to enter into the question, how far conventions by delegation are, or not legal. It is not the question now under your consideration; had these gentlemen confined themselves to what was the law of their country, or adhered to what they professed to be the case, I should not have felt it my duty to have brought them to trial, for being assembled in a convention, or any thing of that kind, which had for its object either the correction of the county laws, of the borough laws, or any other correction which the wildest and most unreasonable speculatist might think it worth his while to aim at.

Gentlemen, I never thought of bringing before you the convention of 1792, the convention of April 1793, or the subsequent convention in October last; nor did I think of bringing the persons now charged before you with sedition, till the very name they assumed, every advertisement they inserted in the papers, every thing verbal, or written, demonstrated to my mind, demonstrated to Scotland, demonstrated to England, and to the empire at large, that they were a set of French conventionists.—I give them that name; persons who, as far as they durst, and their audacity I believe was matter of astonishment to the country at large, who durst take possession of this metropolis, who dared within its walls to hold out the example of a French model, holding out their example as the principle upon which they acted, as the object and the point to which their deliberations tended.

Gentlemen, something was said of orders being given to Mr. Davidson, the sheriff substitute,—that he acted by orders; whether he acted by order or not; whether he acted by the orders of the respectable gentleman who was sheriff depute of the county, but who has since received a distinguishing mark of his sovereign's favour; whether he went by my orders, or by the orders of any body else, is nothing to the purpose; I did consult with that gentleman; I did consult with your chief magistrate; I desired them to attend to their duty, if any desire of mine was necessary: we acted in concert together; had we done less, we had been guilty of a breach of office; we had been guilty of neglecting the most important interests of mankind.

Gentlemen, were I to run over every single paper contained in that inventory; were I to address you upon every motion which appears in that scroll of minutes before you, I should detain you this evening to a very late hour indeed; but I shall select a very few of the most pointed and distinct motions, and evidence therein contained.

Gentlemen.—I will say hardly a word in support of the authenticity of the written evidence which is now upon your table;—it appears that the papers libelled upon, which I have just described to you, are traced home in the most complete and satisfactory manner possible; there is not a tittle of written evidence—there is not a document now before you which is not proved, beyond a possibility of dispute, to have been found in the possession of the panel.—I refer in general to the testimonies of Mr. Davidson; or Mr. Scott, the fiscal; Lyon; and, I think, Mack.—These four, I believe, distinctly trace them from the room in which Margarot and Gerrald slept into the sheriff clerk's office, and having traced them there they are brought into court, and it is impossible to inquire farther. Indeed some question was put by the panel at the bar (who displayed I must admit a considerable degree of ingenuity, and acuteness in his own defence), as if it might have happened from the manner in which these papers were found, that others might have been carried in by Lyon the messenger—that other papers might have been carried in, as they were residing in a public inn in this city, by other persons, and that they were not necessarily the papers of Gerrald, and of Margarot.—In every case where written evidence is libelled upon, in support of any crime, I ask yourselves if it is possible to give better evidence of the identity of papers than was done in the present case—or if you suppose contrary to evidence, and contrary to fact, that Lyon the

messenger, was entrusted by Mr. Davidson, or Mr. Pringle, or me, or the lord provost, with papers of a seditious nature, which he carried into that room where they were sleeping in order to ground a false accusation against them;—if you can suppose that possible, then to be sure any thing that I have said, or have hereafter to say in support of the charge against this man, certainly will not be worth attending to.—Gentlemen, on the contrary, these papers were found in the room where they slept, were put into a trunk, which trunk was returned back to Margarot and Gerrald, and you have it in evidence, that when it was examined in their presence, Gerrald selected his—Margarot claimed the rest, or at least allowed them to be inventoried without denying them, and those which did not relate to this business, were returned to them both.

Gentlemen.—I trust that quibbling defence, for it does not deserve any other name, will satisfy your minds, that the gentleman does know that the import of these papers bears hard against him; and that he wishes to shelter himself from the inference which your minds will draw, by stating a possibility, which cannot exist, that they might have been carried there by other people, in order to ground an accusation against him.

Gentlemen.—Holding that to be clear, I shall beg your attention, in the first place, to the minutes of the convention, for it is the groundwork and the basis of the charge against him: it was a paper which I was very anxious if possible to obtain, because I know that it would have been impossible to have asked a jury to have given a verdict against any man upon suspicions, however strong those suspicions might have been, and you will be satisfied from what we saw this day, from the manner in which the witnesses gave their testimony, citizen Ross particularly, who has spoke out; —and I am sure it gives me pleasure to applaud the conduct of a witness. I have great satisfaction and high pleasure in giving this tribute of praise to citizen Ross, and the same with respect to Cockburn, who, I think, from the whole of his testimony, though a friend and associate of the panel at the bar, has given a fair, a true, and a decisive evidence.

Gentlemen.—The first thing I shall beg your attention to are the steps previous to and accompanying that which is stated in pages fifth and sixth of the indictment. In page fifth you will observe stated a motion respecting a convention of emergency, and the cases in which they were to meet are proved in the first place by the negative evidence of their minutes, and confirmed by the testimonies of Cockburn, and of George Ross.

Gentlemen.—That motion appears to have been first made by a gentleman of the name of Callender, to whom this day was exclusively appropriated for meeting the justice of his country, but who has absconded, forfeited his bail, and does not, it seems, incline to stand his trial; and the first notice given of this motion, I will read from the minutes: *6th day's sitting, 25th November, 1793; citizen Callender moved, that in case the minister bring into the Commons House a motion for a convention bill, it should be noticed immediately to the delegates.*—This is the first appearance of this motion in the minutes, and as it was told us by several of the witnesses to day, the forms of this house, as it is called, or of this convention, did not admit of a motion made one day being deliberated upon till the next;—the motion lies over accordingly till the ensuing day, when you will find the meeting again resumed, and Callender's motion being then taken under consideration; amendments were proposed by several persons, and it was *moved by Mr. Margarot, that a committee, consisting of the mover, seconder, and those that had moved for amendments be appointed to draw up a motion that may meet the idea of all*, among whom was Mr. Callender, the young gentleman whose actual attendance upon the university may perhaps be presumed to have better qualified him to discuss questions as to the reform (or as I call it the alteration) of the constitution, than the learned Mr. John Clark, or Mr. Wardlaw, or Mr. Aitcheson, whose utter ignorance of the law and constitution of the country was so conspicuous in the course of the evidence to-day, and proved how little entitled they were to assume to themselves the important office which they have taken upon them. Citizen John Gartley moves, that the sense of the house be taken upon the spirit of the motion, upon the words of the motion, and afterwards upon Mr. Margarot's motion. Upon the first motion it was carried unanimously to adopt the motion as to its spirit; secondly, by a great majority not to adopt the words of it; and, thirdly, that the amendments be referred to a committee as above.—And at a subsequent diet, I mean a subsequent sitting of the convention, the minutes tell us, that *citizen Sinclair read the amendments upon citizen Callender's motion, as agreed upon by the committee, and it was agreed, upon the motion of citizen that the house should resolve itself into a committee for its mature consideration. In the course of the conversation, citizen Brown gave a history of the Habeas Corpus act. After an excellent discussion of the question, pertinent remarks and amendments, the convention was resumed, and the whole as amended, being read over, the members stood upon their feet, and solemnly and unanimously passed the resolution as follows:*— Here gentlemen, all mention of the resolution breaks off abruptly—A blank in the minutes of upwards of a page immediately succeeds— and the minutes then proceed as follows:— *Citizen Gerrald, in a very energetic and animated address, expressed his happiness at the motion passed, and citizen Brown, followed him in a manly speech, and proved the influence of the executive government over the parliament. Citizen Margarot then read and proposed the*

following motion: That a secret committee of three, and the secretary (it is proved afterwards that Clark, Margarot, Skirving, and Brown, were the four who actually composed this committee) *be appointed to determine the place where such convention of emergency should meet, that such place should remain a secret with them, and with the secretary of the convention, and that each delegate shall, at the breaking up of the present session, be entrusted with a sealed letter, containing the name of the place of meeting; this letter shall be delivered unopened to his constituents, the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state, until the period shall arrive at which it shall be deemed necessary for the delegate to set off.—This motion was seconded by citizen Maffatt, and carried unanimously.*

Gentlemen.—You have in the first place this proved completely by the minutes, that citizen Callender, in his first motion, which was adopted as to its spirit, but rejected as to its words, had neither more nor less than this object in view, that as soon as parliament should think it necessary or proper, if they ever thought it necessary or proper, to bring in a similar bill, to that which passed in Ireland, that this should be the signal or notification for calling the convention of emergency together; and that of itself, without going to other cases of emergency, was just this, that they were to act as a control upon parliament, and to endeavour to overawe (you will consider whether in a legal or an illegal way) the free exercise of the right of the legislature.—Can you suppose that if their purpose was legal, if they had not wished to overawe, and intimidate the parliament from doing their duty, would you have found them alarmed or afraid of their conduct? Had their purpose been only to petition parliament, and to state their remonstrances against such a motion (a right which every freeman of this country possesses), what explanation is to be given of that secrecy in which this measure is wrapped up, if their purpose was honest? but is it so? you find in this paper an account of a resolution which they came to, in a most solemn and most unanimous manner, but which resolution does not appear in the face of the minutes—if it was a resolution merely of the quiet and loyal nature just now stated, do you suppose that it would have been left out. Aitcheson, one of the three secretaries, gave it to-day in evidence, that he was absent when this resolution was discussed and agreed to, but came in soon after, and relieved Ross, who was secretary during the former part of the evening. In this he is confirmed by inspection of the minutes, which are of the hand-writing of Ross as far down as the blank, in which the resolution ought to have been inserted, and the hand-writing of Aitcheson begins immediately below the blank. Can you, therefore, gentlemen, doubt, will not you believe, what Aitcheson also was obliged to admit, that the reason of this blank being left was, that doubts were entertained how far it was safe to insert it in the minutes at all, and it was left for future consideration, whether to insert it or not; especially when it was also extorted from Aitcheson that Sinclair having proposed the resolution should be burnt, he (Aitcheson) spoke and argued against this, and successfully resisted Sinclair's proposal. Is this conduct characteristic of innocence? Would burning of a legal, fair, and harmless paper of so great consequence to the views of this convention, and to which they annexed so high importance and solemnity, ever occur to men conscious of the rectitude of their conduct? Is it not, on the contrary, decisive of guilt.

Gentlemen.—Let us then see what the parole testimony makes out, and whether it does not precisely confirm the conclusion, and inferences, I am now drawing not only from what is proved by the minutes, but also from what is not proved by the minutes, I mean the insertion of this extraordinary blank, to which there is nothing similar, except a blank of four lines, in all the 94 pages of minutes upon your table.

Gentlemen.—Cockburn, I think, tells you, that besides this convention bill, there was a variety of other cases in which this convention of emergency were to meet: he told us that they all agreed that the introduction of a convention bill was to be one great object when the people should meet, and I wish you would look at your notes, when the people should meet to *assert their rights*—I am not to descend to criticisms upon a word, but I may at least beg to know whether, if it was merely drawing up a respectful petition to the king or to the parliament, it was necessary to put so strong a declaration as this to which Cockburn swears; or was it not better to speak out the truth, that they meant, in such an event, to remonstrate against the measure, or petition parliament against its passing into a law? But you have, on the contrary, an expression which savours more of resistance than any thing else—that they were to meet in this unknown place, which was to be concealed even from the delegates themselves, and of course from the eye of the executive power—that in that event they were to meet and *assert their rights*, but as to the manner in which they were to be asserted, whether in a peaceable or tumultuous way, whether the mild influence of reason was to be exercised upon the British parliament, or whether by drawing out numbers of deluded men to do it by force, is your business now to decide, and your province alone to determine.

Gentlemen—The question was this day put to me, was I an inquisitor of the private feelings of men's minds? Had I a right to dive into the secrets of the human breasts, or to discover what it was their intentions to conceal?—That, gentlemen, is *your* province, not mine. It is the very business in which you

are engaged: the duty, for the true and faithful performance of which you are now placed by the law of your country on that bench. Remember always, in considering this part of the evidence, that men engaged in seditious and treasonable proceedings, are always cautious in their language and correspondence, and contrive, as much as is in their power, to disguise and conceal the real and true object, by ambiguous expressions, and general terms, to which, when questioned or arraigned they may affix a very opposite and innocent interpretation. It is for the jury in this, as in all other similar cases, to deliberate well and impartially on the true and real tenor and purport of the writings laid before them: and when they find persons engaged in seditious practices, adopting such general expressions, as *meeting to assert their rights*, to consider what was the real purpose of the words so used. Not to take the professions of the persons using them, as they now choose to explain them, away; not to take what they may now, by a convenient versatility, declare was what they meant and intended,—but looking to all the collateral circumstances of their conduct at the time; looking to their actions, to their words, to their proceedings,—whether these are secret, or public and avowed—to form your impartial determination, whether the scale of evidence preponderates in favour of innocence or of guilt. It is impossible to expect the seditious language or writings to be conceived in direct and explicit terms, admitting only of one interpretation and directly and without disguise, avowing resistance to the established constitution and government of the country. Had these men put on their minutes, that they would meet to assert their rights by open violence and force of arms;—if they had dared to have said or wrote, that if the British parliament should suspend the *Habeas Corpus* act, they would assemble to resist that statute by force of arms;—had they entered solemnly on their minutes, that if a French invasion took place, they would assemble, not to oppose, but to co-operate with, and assist, the invaders, I question much if I should have brought Mr. Margarot to trial at all. I should have considered him as little short of a lunatic. If I had under such circumstances produced him before you, I am inclined to believe you would have thought I had brought a madman to your bar. You might have returned a verdict of lunacy against him, but hardly considered him as a criminal, or a fit object of trial or punishment. But, gentlemen, attend, I pray of you, to what has been this day proved before you, and what the whole train of this man's language, conduct, words, and proceedings have been during the period charged in the indictment. We are fortunate to possess in this country, a powerful and, I hope, vigilant and active executive government. We have laws, however, to control and command that power, and above all a jury can stop and check the progress of its measures in a moment. While such a government exists (and it will exist I hope to all future ages), you must expect that under its eye, and under its power, men conspiring against the state will frame their seditious words and writings, with the most extreme ambiguity and the most cautious obscurity. The best and safest rule of interpretation is to be drawn from the conduct and character of those who use them. Who then is this Mr. Margarot?—The panel at the bar? He is a merchant, he tells us, in London; and the trade in which he is engaged, permits him, it would seem, from motives of pure public spirit, and perfect disinterestedness, to dedicate six weeks of his time to us, and to teach the people of Scotland how they are to obtain those blessings of law and liberty, to which they are told they are strangers. He is a man of considerable talents and ability; well aware of what he is about, and the ringleader of this British Convention. He is the chief adviser and director of all their proceedings;—the framer or amender of all or most of their resolutions and minutes;—the person in law and in reason justly responsible for all the actions of this self-constituted body, consisting in a great degree of ignorant, uninformed, despicable creatures; some of them to-night appearing intoxicated, and all of them the tools and instruments in his hands and under his guidance. The minutes afford abundant evidence, that he and others were conscious the eye of the magistracy either was or ought to be directed towards them, and the jealousy, I had almost said certainty, of its interposition, was felt many days before it actually took place. In measures directed by such a man, and proceedings dictated or advised by him, an artful, insidious, and ambiguous expression is unavoidably to be looked for and expected: and that very circumstance proves to demonstration, that Margarot, aware of the danger of discovery and detection, did, along with Sinclair in the committee appointed to form the terms of the resolution, cover and conceal the real object of it, by as ambiguous and general a form of words as could be adopted; and even after all, sensible of the real truth, concurred with Sinclair, if not in committing it to the flames, at least in abstaining from its insertion in the minutes: because as Cockburn has expressly sworn, it was such a paper as they durst not insert — one which the witness thought neither he nor they could safely hold their faces up to acknowledge: such a paper as was to give rise to a committee of secrecy and emergency; with which, if the object was legal and honest, secrecy was inconsistent,—if criminal, then prudent, proper and indispensable.

Gentlemen.—The next thing I shall observe upon is, those numbers of the Gazetteer which are now upon the table. Citizens of Edinburgh, I use the word citizen, I hope and I know in a fair and legal sense, you cannot

be ignorant of the Edinburgh Gazetteer.* Sure I am I have the honour to be most intimately acquainted with it, and it has done me the honour to be most intimately acquainted with me.

Gentlemen.—Let us look to that paper, and though some doubt may perhaps for a moment arise either in your minds or in the minds of those who hear me, as to the authenticity of a newspaper, as matter of evidence, I will show you, from the evidence of the minutes upon the table, that it is, what it was meant to be, an authentic account, and that, as far as it goes, it states nothing but what really and truly was the substance of what passed in the convention. I trust, gentlemen, you do not suppose me absurd enough to call your attention to the paragraphs of an idle newspaper, if I do not prove its authenticity beyond all doubt. That it was the legitimate, privileged, and accorded Gazette of this British convention is unquestionable. You have the evidence of two of the secretaries, the brothers Ross, that the minutes were expressly taken down, for the purpose of being inserted from day to day in the Gazetteer, and they were so. On comparison the originals and the Gazette so exactly correspond, that there is hardly a shade of difference even in trifles, but in the purport and general import of the proceeding, none whatever. It is recorded also in the minutes, two days before the dispersion of the convention, that the delegate for Montrose having been prevented by indisposition from coming to Edinburgh, and having wrote the secretary Ross, for a copy of the minutes to be sent to him and his constituents, the answer ordered was "*unnecessary, as they will find them in the Gazetteer.*" To dispute its authenticity, therefore, seems to be out of the question. But how do these gentlemen dispute it? By denying all knowledge of, or connexion with it and its publisher? No such thing. But the panel and the witnesses to-day told us, they did not support the Gazetteer as a convention, or in their corporal capacity, but merely as individuals, and wished it well as such. I believe they did so, with all their hearts and souls. But will this flimsy distinction serve their present purpose, or shake the decisive proof to the contrary above referred to? I have a better opinion of the panel's abilities than to suppose he himself can rely on such a distinction, or think it can impose on the understanding of any one who now hears me.

Now, gentlemen, let us look to this Gazetteer, and let us see how far it supplies any chasm or blank occurring in the minutes themselves, or explains any thing there left ambiguous or obscure. I conceive it does so most effectually. For it states the general import of that resolution which the panel and Sinclair wished to burn, but which Aitcheson wished to preserve, because he thought their conduct ought to be open and avowed, and the public had a right to know all their proceedings. After adding the proceedings of the Wednesday, when citizen Mealmaker is in the chair, and when Callender's motion is rejected in its words, but approved in spirit; the Gazetteer, in the account of the proceedings on next day (Thursday), details the import of that resolution as then new-modelled, not in the precise words charged in the indictment, but generally, in such terms as left it no longer matter of doubt what course was to be pursued with this convention. The Gazetteer then proceeds as follows: "Citizen Sinclair said: Citizen President, your committee appointed to amend citizen Callender's motion, met this forenoon, and I shall now, if agreeable to the convention, submit to their consideration the report of that committee. Fellow-citizens, you will feel *that this report is of the last importance.* It claims your most serious attention, is to be decided by your united wisdom, and supported by your united integrity. The house resolved itself into a general committee to consider of this report, which underwent a long discussion, and received several amendments in the committee; and when the convention was resumed, it passed unanimously in the form of a declaration and resolution: but being ordered to stand the last article on the record of the proceedings of the convention, we cannot insert it till the termination of the present session."

Such is the account in the Gazetteer. That this declaration and resolution was the same as that which Sinclair and the panel immediately thereafter wished to burn; that its general import is faithfully stated, is clear from the coincidence of this account with that on the original minutes, and from the parole evidence of the two Rosses, Aitcheson, and Cockburn. The Gazetteer states, that the suspension of the Habeas Corpus act, the dispersion of the convention, the landing of foreign troops, Hessians or Hanoverians, and invasion, were all emergencies to which the declaration and resolution related, but the precise terms of which could not be stated till the close of the convention. I have my doubts, gentlemen, whether, if the hand of the magistrates of this city and country had not immediately interposed to stop the farther meetings of this treasonable convention, the prudence of the panel and the other ringleaders would ever have allowed of this resolution being entered on their minutes. The written evidence, however, proves undeniably what the cases of emergency were,—what the events against which a committee of secrecy were appointed to watch and meet. That the terms of their appointment were considered unsafe and dangerous to be inserted on the minutes, so much that the panel himself, and another ringleader, now under indictment, wished to burn them as soon as framed; and that only

* See in this Volume, p. 43, the case of capt. Johnston, and p. 367, the case of A. Scott.

evaded by an agreement to keep them secret till the termination of their session; and that this declaration and resolution, with the appointment of its committee of secrecy and emergency, were come to and adopted by this convention with a degree of peculiar deliberation and solemnity. These points incontestibly proved by written evidence, recovered out of the hands of the panel and his associates, it is next for you to consider the parole evidence adduced in explanation and support thereof; to look to the reluctant testimonies of the three secretaries, the brothers Ross, and Aitcheson, Cockburn and Paterson, and to say whether this declaration and resolution is not clearly proved to have been in its terms, as in its tendency and import, one not only of a seditious, but a treasonable nature; and which, if it had been acted upon in the slightest degree, if one single meeting of this committee of secrecy and emergency had taken place in consequence of it; if it had been proved that they had assembled together under these circumstances of secrecy, in any of the cases to which their appointment related, the persons so meeting would have been guilty, not of sedition, but of an overt act of high treason, under the statute of Edward 3rd, which, by the 7th of queen Anne, is now the treason law of Scotland. Gentlemen, I must now beg your particular attention to the charge in the indictment. After narrating in general, that a motion was made on the 25th November of the following tenor: "That in case the minister or any other member, bring into the House of Commons a motion for a convention bill, as passed in Ireland, for preventing the people from meeting, according to their just rights by the revolution, the same motion shall be noticed to the delegates of the respective societies, immediately to meet in convention to assert their rights." — The indictment proceeds to charge Margarot with having made the following speech: "This is an excellent motion, and the event which it alludes to ought to be the *tocsin* to the friends of liberty to assemble. It seems, however, to be imperfect. It does not mention any place of meeting; neither does it specify the time when the delegates are to assemble; for the word *immediately* is indefinite, and will not convey the same meaning to persons residing in different parts of the country." After some farther general reasoning, unnecessary to be quoted, the panel proceeds thus: "I believe that the convention will be convinced that the clause of the report of the committee of regulations comprehends the spirit and intention of citizen Callender's motion, and also extends farther, *inasmuch as it provides for a number of cases, equally dangerous to liberty as a convention bill.* It will be found, also, that this business of calling a meeting of the convention had better be entrusted *to a select committee, appointed for the particular purpose of watching every act which may militate against the rights of the people.*" That these words, or at least words to this purpose and of this import, were used by the panel, Margarot, on this occasion, is proved by the Gazetteer, in which the speech makes its appearance: that the effect of the motion itself was resistance to the legislature, in the given and supposed, and not unlikely case there put, and that resistance too *immediate*, is impossible to be denied or doubted; and that the panel, not content with the measure thus avowed, and as thus directed to be carried into effect, did, in this treasonable speech, endeavour, not only to encourage this convention in their designs, but by every argument in his power, do his utmost to stimulate them to resistance still more active, and organize a plan of secret rebellion still more extensive and formidable, seems to me evident on its most cursory perusal. This inference I leave to your impartial consideration.

Then follows the following most daring and seditious declaration, on the notice of which as soon as I received satisfactory information of its existence, I had no difficulty in directing the magistrates of the city and county to do their duty, first by seizing these ringleaders and all their papers; and next by dispersing their illegal and treasonable meeting, if they should again dare to assemble within their respective jurisdictions, to which I must entreat your most particular attention.

Thus is it charged in the indictment:— "This convention, considering the calamitous consequences of any act of the legislature, which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themselves, or by delegation to discuss any matter relative to their common interests, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our own and acknowledged constitutional liberties, *do hereby declare before God and the world*, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country, and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people, and annual election, until compelled to desist by superior force.

"And we do resolve,

"That the first notice given for the introduction of a convention bill, or any bill of a similar tendency to that passed in Ireland, in the last session of their parliament;

"Or any bill for the suspension of the Habeas Corpus act, or the act for preventing wrongous imprisonment, and against undue delays of trials in North Britain;

"Or in case of an invasion; or the *admission* of any foreign troops whatsoever into Great Britain: *all or any one of these calamitous cir-*

cumstances shall be a signal to the different delegates to repair to such place as the *secret* committee shall appoint, and the first seven members shall have power to declare the sittings permanent."

It is unnecessary, gentlemen, to read more to you, because all that follows is of the same strain, and tending to the same conclusion: that there was here a fixed, determined, organized system, coolly and deliberately proposed, considered, reasoned on, and enforced by the persuasion and reasoning of this panel, to resist the legislature of this country, in whatever steps of public policy, or public defence, they in their wisdom might think fit to adopt, and to organize a plan of secret insurrection and rebellion, to render that resistance superior to all obstacles, and to surmount, if possible, the power and authority of the state. That these very words, or words of this import and tendency, were used by Margarot, is proved by the minutes and the publication of the Gazetteer. That the import, and the most material words and expressions charged in the indictment, were used by him on this occasion, a week before the dispersion of the convention, on the 5th December, is proved most satisfactorily by the witnesses this day examined in your presence. For Ross the secretary, and Cockburn have told you, that they remember Callender moving, that in case of a bill being brought into parliament similar to the Irish convention bill, that the people should meet, and *assert their rights*: that the words were altered, but the spirit of the motion was retained: and that the cases of invasion, landing of foreign troops, and the suspension of the Habeas Corpus act, were afterwards added as cases in which the committee of secrecy and emergency were to meet; the place and time of which were to be a secret with that committee and the secretary. Cockburn swears, that he remembers Mr. Sinclair's motion being come to with peculiar solemnity, and that the words "*before God and the world*," were used either in the motion or ultimate resolution; but is certain they were used in one or other. To all the material and essential points of the charge against Margarot, this witness, Cockburn, who, however misled, clearly felt the obligation of an oath, and spoke the truth, most distinctly and positively, gave his evidence; combining all that evidence, written and parole, into one point; weighing and considering it fairly and impartially, can you hesitate in believing that rebellion against the legislature of this country, was the avowed and real purpose of this assembly, and of this panel at the bar in particular. In another part of the minutes, you will see it boasted by Gerrald, another ringleader, who is next in order for trial, that this convention was a representative of the majority of all the adults in Britain. If true, and as these men so asserted, what is the unavoidable inference?—that insurrection and triumphant and irresistible rebellion was in their hands and under their control, and that in no distant or improbable event, they were to exercise it. In the close of the indictment it is charged against Margarot, that on the 4th December, the day previous to their seizure, he, suspecting that the audacious and avowed declarations of their intentions would lead to dispersion of their meetings, added that event also to the cases in which this system of insurrection was to be called into activity. Next evening they were so dispersed; and you have it therefore proved, that if Margarot could have done so, and had possessed, as he said, the power, he would, on the evening of the 5th of December, have excited the populace to rebellion against the magistracy and the state. Compare you that, gentlemen, with what has passed within these few days past in this city; with the attempts to excite tumult and disorder which on the trial of Skirving, disturbed, at a late hour of the night, this supreme court of criminal justice in which we now sit: compare it with the mob assembled this morning to conduct this man to his place of trial with triumph; and with shouts, and clamour, and noise and violence, clearly directed to intimidate court and jury, and prosecutor, in the discharge of their duties. That clamour indeed nobly and honourably met, resisted, and put down by the spirit of the loyal and well-disposed inhabitants, turning out in support of their insulted magistrates and courts of justice, and then doubt, if you can, as to the seditious, not to say, treasonable purposes, of this person, with whose guilt or innocence you are now charged, and on which, on your oaths, you are bound now to return a true and impartial verdict. Is it not an aggravation of this man's offence, that with superior education, intellect, and information, he encouraged a set of low, ignorant, mechanics in their criminal courses, and urged them, by his inflammatory discourses, to lengths, the danger and extent of which it is probable were to them unknown. Their rank and sphere in life I do not impute to them as a fault. God forbid I should. The grocer, the shop-keeper, the shoe-maker, the meanest artisan, is entitled to every good opinion, if he is in private life virtuous and moral. I impeach none of the British convention on that score. They are entitled to my respect, if they are well behaved, as much as the highest peer in the land. But of this I do and will impeach them;—of listening to factious demagogues like this man, of daring to substitute their own idle imaginations, and crude ideas in place of the admirable and free constitution they now enjoy, and of which they have this day been proved to be most utterly and lamentably ignorant. What are in these respects the qualifications of Mr. Margarot, I shall leave with you to determine. For me I do not think he has that knowledge of our constitution, as to entitle him to assume to himself the high and arduous duty of improving it, in any mode he may apply

his talents to that purpose. Sure I am of the law of his country he is not, after what I heard from himself to-day, at all entitled, in the most remote degree, to be its reformer. I should be sorry to think it possible that you, gentlemen, to whom I now address myself, can form a different opinion of him.—Who are the men to whom the history of the world has consigned the highest honours, and the most eminent characters? The legislators of ancient and modern times: and who are they? Men of the most unbounded talents and highest ability;—of extensive information, with weight and authority established over the minds of their countrymen, and sanctified by all the respect and deference annexed to experience and age. In former times, they were supposed to have had converse with heaven, and were raised by their grateful posterity to the rank of demi-gods. Their names have endured through successive ages, and shall endure as long as civilized humanity subsists. But now-a-days, it seems, all these things are changed. A boy, such as the witness Calder, now at the University, steps forward at once to controvert the practical and prudent wisdom of our ancestors, and to tell us what is law, what is freedom, and what is the best form of preserving both. A set of the lowest and most ignorant of the people are assembled together, and advised and directed by Mr. Margarot to subvert our present, and raise on its ruins a better form of government than that which our fathers established, and most foolishly, as it is now declared, left us an enviable and valuable inheritance. Will you, gentlemen, allow him, and Skirving, and Gerrald, and those other ringleaders, to persuade with impunity these poor, misguided, and deluded creatures, that they are fit and competent to enter on subjects of this important nature, or authorise, by your verdict, this man to believe that this nation, consisting of ten millions of people, is to delegate the task of legislation to such a set of ignorant and uninformed people—ignorant of the common principles of law and justice, talking of books they never read, and declaiming upon subjects they know nothing of?

It tends to aggravate the crime of this man, that if he was an attorney, which I do not know that he was, he has made an ill use of his profession; his criminality is without excuse; his guilt is indeed of a more atrocious nature. What is sedition but this?—a convocating of ignorant, weak, and deluded people, under the pretext of redressing grievances of any kind, and inflaming them against the constitution and the established authority of their country. But this is the direct fact proved against Mr. Margarot, it is the point distinctly brought home to him; and under such circumstances of resistance, inculcated upon the part of these ringleaders, which in my mind, and I trust in yours, will satisfy you that guilt was in his mind when he did so, and will entitle you to lay your hands upon your hearts and say, that he is guilty of endeavouring to spread the contagion wide among people who knew not what they were about; which if they had followed his advice, if they had rose into tumult and disorder, might have brought them to an untimely end; and perhaps these three days past may afford some idea of what might be the purpose of assembling such persons together, if they had been assembled by Mr. Margarot as a convention of emergency; if they had been told by him, now is the time to assert your rights. I assume that the attempts within these three days past, to excite tumult and disorder, within this city, will show us what was the nature of that object which Mr. Margarot had in view, and what the purposes, and what the manner in which in such an event, they would have carried their schemes into execution.

Gentlemen, I have now gone through every thing upon this part of the indictment; and certainly in arguing, and being obliged to quote considerably from papers, I must have gone longer into the case than I had any idea of; but I trust I shall, before I sit down, in a few words, go through what remains, and prove, to your satisfaction, that every part of the libel is clearly and distinctly proved.

Gentlemen, Cockburn tells you, hat he thought the Irish bill sapped the very vitals of the constitution of the country; and that the resistance to any similar bill in Britain, was to be kept a secret. If any illegal power interrupted their meeting, that is the reason he gives for the secrecy; that is to say, that if either the magistracy of this city, or Parliament itself, or any such inimical power, they being clearly the persons to whom he alludes, are the cause of the secrecy; and it is all I ask from him. You will consider, whether it is not just the thing I am stating as the point in their view, that they were keeping it secret from those whose duty it was to check it, and prevent the consequence that might arise from it.

Gentlemen, the case of an invasion I have already stated to you, was one of the cases under which the convention was to meet, and I shall not repeat what I have said upon that subject; but I trust that you will think with me, that the only and the necessary conclusion is, that which I have already stated to you.

Gentlemen, having done with that part of the case, I come to the next, which I observed, in the course of my examination, and which I also observed in the course of the panel's speech upon the subject, seemed to be treated with very considerable contempt; and Mr. Aitcheson, a determined and bold-faced gentleman, told you his opinions in very strong, forcible terms. He was pleased to say, that he did not understand sedition neither; and yet he is a man, who, from what I have seen of his abilities, I should have expected would have known a little more than Ward-

low or Clarke knew of the subject. But he did not know what sedition was: and he tells you, that the law of the country was come to a sad pass indeed, when the word *citizen*, which he gloried in, was to constitute a man criminal. And he told you, that the principles of this convention were carried on in the same way, or very little different, from those which marked the proceedings and conduct of the former convention. If they were, all I can say is this; that these former conventions kept their proceedings very much a secret; for if I had known that they had done so, or come to any resolutions similar to those proved to-day against this man, the members of that convention should, before now, have stood before a jury of their countrymen. If they did so, then all that I have to say is, that they were more cautious, or they perhaps did not think that the time was quite ripe to express what they have since expressed. To be sure, the term citizen, taken by itself, is an innocent and a proper term; I have used it to-night: we are all fellow-citizens here to-night. And the word 'tocsin,' whether it comes from France, or whether it comes from China, or any where else, I feel nothing criminal in that term, taken by itself; nor in the first year of British liberty; nor indeed the decades, which, by the by, I find in one of the plans for the support of the Gazetteer, that it shall be divided into decades, and that each decade shall take so many copies of the Gazetteer; that is a Latin word; nor the first sitting; in the same way all the other expressions, which I will not run over, taken by themselves, are surely and unquestionably innocent; we all may use them in an innocent sense, without the smallest apprehension, or the smallest blame. But here is the point, gentlemen, upon which I found the charge of criminality; it is for this purpose that I collect these expressions, occurring in the proceedings of these minutes; and I collect them as links in the chain of evidence, to show you that this man has been guilty of apeing and imitating the French convention, as acting upon that model and that principle, as in the same way was done last year in Ireland, and was the cause of the Irish parliament passing that act; it is a proof of the animus and the intent of the persons concerned in that meeting, that they took for themselves the model and example of the present convention of France, imitating it in every way in their power; and the conclusion is irresistible, that if they durst have gone forward, or if an invasion had taken place, we would have found these men joining that band of invaders, whom they admired, praised, and imitated, in their hostile attack on our country. You will consider with yourselves, laying your hands upon your hearts, whether it is possible to doubt, that this was the real, the true, indeed the hardly disguised purpose of their proceedings, when you find them, in all the enumerated cases, organizing a secret committee, to meet at a spot concealed even from its members, as a rallying point, which the eye of the executive power of the state could not reach, and from whence they might direct the means of insurrection and co-operation with the enemy, without running the risk of at least immediate detection. Can you hesitate one moment in thinking as I think, and as I believe, that if such an event had taken place, that men who form themselves upon that model, and assumed, as far as in them lay, and as far as they durst, the expressions of the French convention, with which we are at present at war, and by whom we are threatened with that invasion, would have gone against the persons who were their own objects of imitation, and that we would not have found them consistent in their conduct, by following French examples still farther, by accomplishing that which, to the astonishment of Europe, has too successfully as suddenly been accomplished, a subversion of all government, of all religion, and of all the laws of society, and the establishment, in their stead, of a system, pretending to be, or to resemble, that of universal suffrage, one of the great and leading objects of this convention, whose conduct and real objects you are now called upon to consider and declare?

Gentlemen.—You cannot expect more direct and convincing evidence of what passed in their minds, until the evil is gone to such an height, until the invasion has taken place, till the tumult or the insurrection has happened, which these men have endeavoured to foment. Sedition then would no longer be the crime; treason would be the shape it would then assume: it would then be the duty of every free and loyal subject to join hand in hand against these traitors, whom we have found, in the moment of that invasion, assembling in a secret place, as the delegates of thousands, and whom we find proving themselves, by every act by which it was possible to prove themselves, to be the supporters and imitators of the French convention. I call them French Conventionists: it is the essence of the charge against them: it is the point upon which I desire your attention. If they were the mere innocent convention, or assembly, or association, or society for reform in parliament, be their reform never so absurd, or the instruments of their meeting never so ineffectual for the object, I say God forbid you should find them guilty, to the extent of the most trifling punishment which the law can fix upon them; but if you find them directly avowing, in hardly equivocal and doubtful terms, that an invasion shall be one of the cases in which they shall assemble, not to do that which would be the glory of a loyal subject, to sacrifice their lives and fortunes in resisting the invaders; but if we find them, instead of that, showing their predilection for the cause of France in all its forms,—it is your duty and your province to dive into the recesses of the human mind; to

consider the inference which arises from such proceedings;—to consider, if you will not lay the hand of criminal justice upon them, to quell the conspiracy before it bursts into light; or if the deluded people,—I speak of the inhabitants of this city, I speak of the inhabitants of Scotland at large, and of what has passed within these three or four days,—are so much in the power of these strangers who have lately come amongst us, are to come in an unusual mode to a court of criminal justice, either to over-awe that court, the prosecutor, or the jurymen; if they are to be indulging in false and scandalous aspersions, as that of packed juries, it is for you to interfere, and check the evil in its bud; now is the time, this is the moment for you to mark your sense of their proceedings, and stop them, while their guilt still remains with a feature of sedition marked upon it, verging upon treason, with such a trifling distinction, that it is almost impossible for a lawyer to find the difference. It is so little, that when the indictment was preferred against Mr. Margarot, had it not been for the promptitude with which it was necessary to bring him before you, I should have laid the case before the king's council in England, as to the appointment of a secret committee, whether that, *per se*, was not sufficient to ground the charge of high-treason. Sure I am, but for the act of the 7th of queen Anne, that the gentlemen were far within the case of Scotch treasons; and in that case, Mr. Margarot would have stood at your bar tried for his life.

Gentlemen, before I sit down, let me return again to the evidence of Mr. George Ross, who tells you that he had heard of a convention bill, and of a number of Hessians and Hanoverians to be landed in this country; that also was a case when it was proper for the convention to meet at the secret place of meeting, that is to say, and it is the case at this moment, I believe, that as a body of Hessians are passing towards France, if parliament should choose to allow them to land upon this island, this was also a case of emergency; not that we could confide to the wisdom of King, Lords, and Commons, but the British convention was to decide alone what was to be done; a case exactly of the same kind with the other, even in the way that Mr. Ross himself states it. But I will not wound the feelings of that worthy citizen (and I trust that he hears me), by saying, that he concealed the truth, I will not say that; but he has forgot that mighty event which his brother and Cockburn swore to, which must have struck the mind and ears of every man who heard it; but his memory is a frail one, and with that observation I leave him.

Gentlemen, we are now coming near to a close. You will find a variety of other evidence, much of the same nature, in number 3, of the inventory. You will find one of the documents material to be attended to, in considering this question: Whether the convention is a seditious or a fair convention? for that is the gist of the question which you are to try, and upon which you are to make up your minds. Now these papers are traced home to the possession of Mr. Margarot. Mr. Aitcheson, in his character of assistant secretary to the convention, identifies a paper, to which he tells you, in this convention, he put his subscription, entitled, "*Hints on the Question of Union;*" and in the inside are three or four different papers, which the witnesses who made the search swear were inclosed in it, and all relating to the solemn way the appointment of that committee of union, of which Mr. Margarot was the chairman. He appears to be the leader of this committee of union between England and Scotland; a union which these gentlemen, it seems, had authority to make; a union which we unfortunately have been deceived, as well as our fathers, in dreaming that we have possessed, and, as we thought, enjoyed since the year 1707, which Mr. Aitcheson told us was nothing like the union brought about by this convention, with so much solemnity; a wild, sycophant union, I think he called it; and Mr. Margarot is the person who takes the active part in this committee. Let us see what it amounts to. I shall take the paper itself which Paterson, a man who, much to his credit, has seceded from that meeting. He, as the head of his section, admits, that that paper was drawn up in his section, and was by him sent in a letter to the convention. Mr. Margarot, feeling the force of these papers, desired to know, How are you certain that paper was in the convention? I will tell Mr. Margarot how I am certain of it. Mr. Aitcheson subscribes it at the back, "Hints respecting the Union;" and says, it must have been put upon that paper in its reception. Mr. Paterson tells you, he sent it in the common form from his section, which met in the morning, to the convention, which met in the evening, and of which Mr. Aitcheson was assistant secretary; and there is no reason to suppose, that it did not reach its place of destination, the Masons Lodge, at the foot of Blackfriars Wynd. And what is it? "Hints upon the Question of Union." First, that the people of Great Britain, disclaiming any distinction of Scotch and English, do now and for ever unite themselves into one mass and indissoluble union. Then it goes on—Make known to all concerned, in exclusive terms, that this shall be the motto:—Restoration of Rights. What rights? Universal Suffrage, and Annual Parliaments; a thing that never did, and that never can, exist. Let them go back to the history of England; let them go back to the deepest antiquity; it never did exist. Those people, until tutored, misled, and misinformed by Margarot, had not heard of the Bill of Rights, nor the claim of rights; and knew not what rights they had lost. But, gentlemen, I have been taught, by every writer on this subject, either foreign

or domestic, a very different doctrine. We have all been hitherto educated in, and impressed with, the belief, that the free constitution of this great and happy country, gradually improved and perfected by the wisdom and spirit of our ancestors, through successive centuries, and mellowed down by the hand of time, has reached its present boasted pre-eminence, and conferred the highest benefits on its inhabitants, that it is possible for human institutions to confer on a people. If the doctrines and tenets preached by Margarot and his associates be true, that annual parliaments and universal suffrage are necessary to constitute freedom, we never have been free from all eternity, and are not free at the present moment. I hope in God, in that sense we never shall, because that never can take place, for the best of all possible reasons, as I believe the late Soame Jenyns says, It is the best plan of the whole, says he, for the best of all possible reasons, because it is impracticable. It is tedious, gentlemen, and I am confident unnecessary, to dwell more minutely, and more at length, on the irresistible proof of a seditious and treasonable purpose, deducible from a perusal of every page of the minutes of this convention. In order, they say, that all occurrences may be known from one end of the kingdom to the other, and in order to instruct every individual of this great and indivisible mass, they appoint a committee, for devising the most effectual means of disseminating their seditious proceedings, and circulating the contagion as widely as their mischievous intentions could invent. Always do they run upon the French expressions in every part of their minutes, in every speech in their Gazetteer, continually recurring to French words, French terms, and French expressions. In another motion, made by James Gartley, which Aitcheson volunteered in telling me was not evidence against Mr. Margarot—being found upon his person—it proves the nature of that convention, of which he was not only a member, but an active, leading instrument; it is also marked upon the back by Aitcheson, and this motion signed James Gartley, who is the town drummer of Anderston, near Glasgow, is, "*that the convention took into their serious consideration the necessity of dividing the country into departments, in order that the Friends of the People may have an opportunity of meeting in the particular department to which they belong, and thus form a sort of provincial convention, that they may become more particularly acquainted with each other.*"

Gentlemen,—The honour of the sitting appears to be given, by the French convention, to persons they wish to favour; so we find, in the minutes, among other insignia of the honours of the British convention, secretary Skirving stated, that he had just now received five shillings from an unknown hand, for the use of the convention. "Honourable mention in the minutes was ordered to be made of this patriotic gift."—Upon my word, I never was in the French convention, and I hope I never shall be, but I should have supposed, from what I have read in the newspapers, that I was reading of the French convention at Paris. Citizen Callender moved, "*that no person be allowed the honour of the sitting, without the recommendation of two persons;*" it is a favour not to be bestowed rashly or lightly; which, with amendments, passed unanimously. Afterwards it was moved, that capt. Johnston,* and I am extremely sorry to find him here, if he is the individual to whom I allude at present, because it may perhaps compel other proceedings against him; but when he read an account in the newspaper of the sentence of Holt, the printer, of Newark, for reprinting the duke of Richmond's and Mr. Pitt's resolutions upon parliamentary reform,† it was moved, "*that capt. Johnston be admitted to the honour of the sitting.*"

Gentlemen, there is one other circumstance which I cannot help just in passing to take notice of, and it is that of a compulsory attendance enforced upon those persons who might have the misfortune to be deluded in a rash unthinking moment, into a participation of their proceedings, to shame them from doing, as Mr. Paterson, much to his honour, did, return back to their duty. In this manner you will find it resolved, that no delegate is to leave his post, or is to get permission of absence from it, till he obtains a new delegation, a substitute in his place to act for him: of this arbitrary, intolerant, and despotic spirit, we saw I think too strong symptoms in the conduct of the panel today. He presumed to put and insist on a most irrelevant question to the witness, Paterson, which highly indulged as the panel has been, the justice of the court would not allow. He then sneeringly said, he would not touch the sore heel of Paterson, for having done that which, I am sure, you will join with me in thinking was to his honour. Would to God every deluded member of this convention had spirit and sense to follow Paterson's example. In one of the papers citizen Wilson and another requested leave of absence to be granted them, and it was moved that all the delegates should have letters to return immediately, and remain at their posts till the important business, daily introduced in the convention, shall be properly discussed; and in page 100 of the minutes, citizen Scott moved, that before any delegate from the country shall leave his post, he shall write to his constituents to send another in his room. Agreed to, nem. con.

Gentlemen, the two instances which I have given are perfectly sufficient to show, that in this respect also, as in their declaring

* See the proceedings against him, *ante*, p. pp. 43. 60.

† See Daniel Holt's case, Vol. 22, p. 1189, of this Collection.

themselves permanent, which is proved by all the witnesses, and which is proved by the Gazetteer, that they, in every paper, imitate, in the most minute particular, the proceedings of the French convention. In one word, I leave this point for your consideration; repeating again, that those words, taken of themselves, or in any different circumstances, would have themselves been idle, and that which you could have grounded no verdict upon; but taking them in conjunction with the evidence of the Gazetteer, and the parole evidence this day upon your table, certainly do go to the point, that this was a highly seditious, if not treasonable meeting, avowed to be assembled for the purpose of overawing parliament, and resisting any act which might pass until compelled to desist by superior force: if you are of that opinion, you will find a verdict in my favour; for with regard to the panel being a ringleader in this business, and being a man who conducted these committees, the evidence upon that point is so clear, it is impossible to be disputed; the moment you have come to a determination upon the one point, it necessarily follows, that he is a principal in the guilt of being a member of that convention, and a ringleader in it; and as such, he is more responsible than the poor creatures whom you have seen to-day, and who were under his guidance.

Gentlemen, I am afraid I trespass more upon your time, much more than I had any intention of doing, when I rose; but I cannot help taking notice of one thing which dropped from the gentleman at the bar; in the commencement of this day's trial, he told us, that he had cited several persons as witnesses in his behalf, who have not appeared this day upon the trial; men bearing the highest offices in the state, and at present discharging the duties of those important offices in England. And he brought evidence, which I dare say is the case, that, under the letters of exculpation which issue of course, and in which he can fill up any name that he pleases, that he subpœnaed them in London by the forms of the law of England: in the course of his remarks on this matter, and in which he digressed into topics neither proper in themselves, nor bearing at all on his case, he referred to myself and to my own candour, if the public prosecutor had not higher powers in bringing witnesses to this court than what he possessed. I have no difficulty, at all times and seasons, to give my opinion to a panel, whether I am bound to do it or not, and I then did give him an answer; I said I had no more power of compelling witnesses to come into this court, than the meanest criminal at the bar. Our rights, in that respect, and our powers are the same. I will give him an instance of it: the case occurred twelve years ago, when one of your lordships filled the office of solicitor-general of Scotland. A man of the name of Mackay, a carrier of letters at the post-office, was accused of having embezzled letters and stolen money entrusted to his charge. The principal evidence was a woman, a relation of his own, and who, immediately after the fact was discovered, retired to England. The solicitor-general brought his indictment against him. I appeared as counsel for the panel. The trial was adjourned from week to week, and from day to day; because this material evidence, the woman, would not come, for obvious reasons, within the jurisdiction of our courts of law, to give her testimony against the panel And how did she at last come? Having been concerned with him, she came at last, because means were found to notify to her, that if she did not come and do her duty as the witness against the panel, she herself would be tried in England as an approver of the crime; and therefore she came to save and redeem her own life, and gave evidence, as she was bound to do; and which she would have been compelled to do, if she had been in this country; and I hope this instance will satisfy him, that even the powers of the public prosecutor are just exactly what his are; that he must take his chance of bringing witnesses from a foreign country, as we do; and if he is not successful there is no help for it. If by the complaint he made of the non-attendance of these gentlemen, all of them now bearing the highest offices in the state, the panel means to found any plea of favour upon it, I leave him in full possession of any benefit he may derive from it; merely observing that if you were to give weight to such an objection, there is not a panel who would not be entitled to the same benefit, be his crime what it may, who will not tell you he has witnesses in Germany, in France, in America, or in the Indies, and you must always take the panel's word for it; and it is for you to consider whether criminal justice in this, or any country, could ever be administered, if so flimsy a pretence as this was listened to.

Gentlemen, before I sit down, I must observe it was said, that in all their proceedings they were not afraid of what they were about. Compare this assertion with one very material paper, which I trust will satisfy you that the gentlemen were both afraid and aware of the danger of what they were about. In a letter from Mr. Hardy, who is the secretary of the London Corresponding Society, which was found in the possession of Mr. Margarot, after a long account of what was going on, and telling him, that they had sent drafts for money, and complaining of the short coming of the funds which were subscribed, it seems, for the carrying Mr. Gerrald down to this country; which, he says, had fallen lamentably short of their expectations; and at last concludes thus: "I have to inform you of the wish of the society, that you would favour them with the number of

delegates in the convention from England, and also how the civil and military power relishes your meeting." Upon the 8th of November, 1793, a few days after Mr. Margarot and Mr. Gerrald arrived in this city, upon an object which they are not ashamed or afraid to avow, an object for the public good, and of Scotland in particular, it is something extraordinary, that it should come into the head of the secretary to the meeting by which they were appointed, to ask the question how the civil and military power relished their meeting. The military power has never interfered: it cannot interfere to check such meetings as these, unless, what I hope and trust never can be the case, the consequences of these meetings were such as to render the civil power compelled to adopt that last and necessary measure. Though, were I to look at the speech of Mr. Gerrald, stated in the Gazetteer, mentioned in the minutes, and which he made immediately after that solemn resolution was come to,—I will not at this hour trouble you with quoting it,—it is clear to demonstration, that Mr. Gerrald at that moment shows, in express terms, what is his meaning; that this resolution was come to, with the purpose of resisting lawful authority by force, or as Cockburn tells you, paying no regard whatever to any such act of the legislature. In that speech referred to in the minutes, and in the Gazetteer, he says, "I rise to congratulate the convention on the adoption of this resolution, not only on the propriety of the measure itself, but on that unanimity and solemnity with which it is passed:" then goes on to a long story with regard to the Irish bill. But the conclusion is this, "though I could not get a copy of this bill, the heads which I have read are sufficiently explanatory of its detestable principles," and what, gentlemen, is the bill thus strongly execrated? One which was passed for the wise and only purpose of preventing the meeting of a convention formed upon French models, and imitating French politics. I read the other day a speech of one of the ablest men in the Irish parliament upon that subject. The object of that bill was, to check a society of united Irishmen; a society with whom I also have the honour to be acquainted; a society which sent some papers to this country of so seditious a nature, that even the first convention refused to receive it, as being a treasonable paper, for which the unhappy mover is at this moment suffering the punishment that the law has awarded. He goes on:—"I hope the motion, which has passed this night, will convince the minister, that we are determined to guard against every attempt that may be made to deprive us of our rights; and, though by some it may be thought a bold, by others a daring measure, yet it will be found the best for securing the peace of the country; for if such a law were suffered to pass, if men were not allowed to utter their complaints, a number of rancorous passions would arise, and we would seek to appeal to that last terrible decision, the event of which is uncertain, but which God and nature allow. If the servility of the people had been less, if they had dared to meet, and in place of murmuring, had told the rulers, that there was danger in seeking to deprive them of their liberties, we need not have had that resolution to have recurred to to-night; but when I saw the calm deliberate countenance of every one present, and the solemn manner in which it was passed, I was convinced that it was not only a resolution of words, but a rule of action." This is the commentary which, if you believe the Gazetteer, and we are bound to believe it, after what we have heard,—this is the commentary which Mr. Gerrald gives to that resolution, to which I have already spoken so fully to-night, and to which I have affixed so criminal and so guilty a conclusion. Can the truth of my conclusion be doubted, when I refer you to the authority of Gerrald in its support. Out of Gerrald's mouth is Margarot condemned. Had the resolution itself been never so cautiously and ambiguously worded,—as but for the audacious confidence of these men in their expected success, all of us would naturally expect would and must have been the case,—how could you, gentlemen, have hesitated in deducing from it the only true inference that rebellion and treason were the real objects in view; when you find it avowed in the hearing of and with the solemn concurrence and approbation of this assembly, that in any of the cases of emergency therein stated, its terms were with them, and all those they represented to be, not a resolution of mere words only, but a rule of action? If such persons, or any persons are to meet and consider and decide on what they call their rights, and fix what measures of the legislature are to entitle them to resort "*to that last and terrible decision, the event of which is uncertain, but which God and nature allow*,"—if you, gentlemen of the jury, with whom alone it rests to check such proceedings, are to sanction them by your verdict, and allow such audacity to pass free and unpunished, where is the security of your laws, your lives, and your liberties? Where is that protection which this free government is said to bestow on us all, equally and impartially, high or low, rich or poor, if these men's opinions, were they ever so plausible, and the individuals never so wise, learned, and experienced, are to be set up in opposition to the British parliament? If they are entitled to judge at what point their resistance is to commence, and when they are to recur to that last and terrible decision, the event of which I trust and believe would not be uncertain, but where the cause of religion, of law, of justice, and freedom would ultimately prevail, then civil war is with all its horrors, the infallible consequence amongst us; and that

war, founded on principles recognized by these men as the same which has subverted by the same means the most ancient and powerful monarchy of Europe in a moment, has spread desolation, and murder, and blood throughout the hitherto flourishing, now ruined kingdom of France, and involved its wretched inhabitants in miseries unparalleled and incredible.

If I have vindicated you, as I hope I have done, in the commencement of my argument, from the scandalous and unfounded imputation of being *packed*, as you were said to be, may I be permitted, gentlemen, before I conclude, to vindicate myself and the other servants of the crown, as Margarot at the same time styled us, from the imputations he then indulged in against us. If he means the servants of the crown in this country, I unquestionably stand amongst them. It is said that *we* are the persons guilty of sedition; that *we* sowed sedition between our master and our fellow-subjects; that *we* are the proper persons to stand at that bar; that to *us* are to be imputed the offences with which I have charged him. Upon that point I now stand, as the panel does, on my trial, before a jury of my country, and I feel not the least difficulty in thinking, that upon that charge I shall meet with a complete acquittal. All that I now say is, that standing in the situation in which I do, and ably assisted as I am, I have never brought any indictment against any man for any offence; I never opened in my life a bundle of papers which were laid before me, containing the case of a proposed criminal, without an awful feeling upon my own mind of the delicacy and the extent of that duty which depended upon the exercise of my understanding, and carefully consulting my conscience upon the subject. If you differ with me upon this occasion, I should at least hope,—if it is possible we can differ upon the subject,—that you will not think I have brought any improper or oppressive prosecution before you; at least, if I am guilty of seditiously perverting the duties of my office in this man's case, I shall look back with some consolation, that in the precisely similar one of his associate, Skirving, I have received the best support which comes home to a man's conscience, the unanimous verdict of a jury of my country.

Something was said of my being a placeman and a pensioner. I am a placeman, it is true; I have been for ten years in two high official situations; neither of them at any time sinecures, but which, from the exertions and artifices of this man and his associates, has of late been rendered to me peculiarly laborious, painful, and severe. To the charge of being a placeman, I therefore plead guilty. That as such I am unpopular in the British convention, I have not a doubt. Even the boy Calder exulted to-day in giving his evidence, that he was not a placeman. Absurd as the imputation is, and unworthy of my notice, I cannot forbear saying that I should feel myself mean indeed in my own eyes, if, by accepting the situation I now hold, my independence was injured in the smallest respect. If I have been, by accidental circumstances, early brought forward to a high situation, if I found its duties militating against the dictates of my own mind, I trust, with all the emolument of it, nothing should tempt me to retain it, or prevent me from throwing it up. I have done nothing but brought the guilty to justice; and as to what they may say, I care not. If the panel thinks he can be benefited by attacking me on the ground of my being a placeman, or on any other topic whatever, he both has the right to do so, and my full and perfect approbation in so doing. As to being a pensioner, I am not; and if that too is matter of reproach, it is not likely I shall ever be liable to it. Born, gentlemen, in this city, you know my situation in life as well as any body. From the hour I first came to the bar, I have supported myself by my profession; and were I turned out of my present office to-morrow, I should retire behind that bar again, with little else than that honourable profession to support me and my family, as free of the public money, as independent a man as I was in 1784, when I was first introduced within it. I beg pardon, gentlemen, both of you and the Court, for having thus deviated from the strict line and path of my duty, to notice matters personal to myself, and with which you will justly say, you have no concern. But having been attacked in your presence and hearing, and as the panel may probably in the defence he has now the right to make, indulge himself in farther accusations against me, to which, by the just and humane practice of the Court, I have no opportunity to reply, I thought proper to say so much before I sat down, and before I call upon you—which I hope and trust will be the case—to return that verdict which I think is founded upon the evidence, that this man is guilty of the crime of sedition with which I have charged him.

Mr. *Margarot*.—Gentlemen of the jury; I shall come undoubtedly with great disadvantages, after the florid oratory of the public prosecutor. However, he fortunately for me has been so very profuse in many points, that it reminds me of Shakespear's proverb,

"Two grains of wheat in a bushel of chaff."

I address myself at present to my country, and through the medium of a jury.—You are the representatives of that country;—great is the trust reposed in you;—you are men, I make no doubt, of untainted, of unspotted characters, and I hope you will prove yourselves such.—High sounding words I hope will yield to plain sense.

Gentlemen, I am not an attorney, thank God, neither am I a member of parliament,—thank God likewise.—It is the

public accuser's business to set forth, in the most lively colours, every crime, or imputed crime, which he states at the bar of this court.—I do not blame him for so doing. I do not find fault with him for making the most of his talents, or doing the most for the money he receives.—He has however tried to prejudice you in the first instance against me. He has thrown out that I have asserted that you are a packed jury.—It is a falsehood.—Forgive me, gentlemen of the jury,—forgive me my country, if I speak bold but plain language.—I cannot give you (for I am not a sycophant) high sounding words, but that which you will understand. I did not say you were a packed jury—I objected to not one of you, but objected to the unconstitutional way in which I said the jury were chosen out of the assize; because it is in the breast of the lord justice clerk to pick out such as he thinks proper; and therefore, though you are not a *packed* jury, when he chooses to exert his skill and penetration that way, you may become a *picked* jury. However, at present the cause is of great consequence; it is not merely a criminal at the bar that you see in me;—it is not the crimes of an individual; it is not the efforts of one single person that are attacked;—no, it is at present your own rights which are attacked, it is the rights of your country, and your country look to you to do those rights justice, and to sustain them.

Gentlemen, the public prosecutor has found means to blend trials, crimes, criminals, various persons and various articles of accusation altogether, in order to make a sum total of such a size, as shall seize upon your imagination, and make you behold a mountain of guilt, where in fact, there is not even a mole-hill of imprudence.—In me at present, I am sorry for it, and it will appear perhaps a kind of pride; but it is the truth, that in me the cause of a parliamentary reform is this day attacked—it is not the individual me—I should have escaped notice; but it is the dangers impending from abroad, and the dangers impending at home, on the heads of those who now occupy some of the highest stations in the state;—of those who, entrusted by the crown with the greatest powers, may perhaps have made a worse use of them than they think they could answer for before a parliament, fairly and freely chosen by the whole people of this country; and yet that very cause of parliamentary reform was espoused by these very men before they were in place.

Gentlemen, the public prosecutor has said, that I attempted, both in doors and out, to shake the confidence of the people, with regard to a jury; and he afterwards, with truth added, that a jury was the brightest privilege of Englishmen.—So it is, where a jury is faithful to its trust, it is the greatest privilege the British constitution knows of; because, gentlemen of the jury, when you are honest, you stand not between the law and the accused, but between those in power and the accused;—you see the due execution of the laws;—you stand between the accuser and the man who is perhaps weaker than the accuser, either in tongue or in knowledge; and as he has thought proper to avail himself of that superiority and to carry it forth, I will undoubtedly yield to him with regard to talents and eloquence, but for the soundness of my doctrine I will not yield to him.—Gentlemen, I never attempted to prejudice the people against a jury. I ever will lift up my voice against any act of iniquity, in impannelling a jury,—against every act of iniquity, in trying to mislead a jury, or in trying to influence a jury; even if the man on the bench tries to influence a jury, I shall stop him, I shall withhold him, and tell him, it is not his duty, though he sits there as judge, and I stand here as a criminal; it is my right as a Briton, to keep him within the bounds of his duty, to keep him close to the execution of the laws, if he attempts to depart from them in any one instance.

With the same spirit of inflation, the public prosecutor has swelled out the treasonable matter which he says lies on the table; and he is obliged, in the end, to tell you, that if it appears to you that the British convention really had no seditious motives, if they were only, *bona fide*, seeking a reform in parliament, whether it was to be by annual parliaments, or whether it was to be attended with universal suffrage, or in whatever way it may take place, yet that convention must be innocent. But, says he, you must concur with me, that the parole and written evidence are more than sufficient to prove him guilty; and adds a very curious reasoning:—he says, if you wait till you have positive proof, it will be too late; therefore, make haste; avail yourselves of the presumptive proof that I give you, and condemn him; which is to say, sport with the lives, sport with the liberties of Englishmen, for fear of accidents befalling you hereafter.—Is that the language of mercy? Is that the language of the constitution?—Is it the language of the laws?—He calls his proofs in the first instance solid and convincing; although, at last he is obliged to have recourse to that subterfuge; he says, it amounts to more than sedition; and arraigns the ignorance of the members of that convention, at the same time that he arraigns their wickedness, that they pretend to be ignorant of what really is sedition; and yet he does not deign to inform them.—He says, it is as strictly defined as murder, but he does not give you that definition; he only says, we are guilty of sedition.—Now sedition must be some act; it cannot be a concealed operation of the mind, it must be an overt act; and yet he wants you to judge not of our overt acts, but of our intentions; which, all the witnesses have agreed in saying, were peaceful, orderly, and seemingly legal. I say seemingly, because, as

there is that idea of our appearance being different from our real intention, I put the word seeming into their mouths; but I profess to you that our intentions perfectly coincide with our operations.—He acknowledges the right of the subject to address the king, or petition the parliament; and it is well that he acknowledges it.—The affront upon your understandings; I repeat it, the affront upon your understandings—would be too gross, were he not to acknowledge that freemen have a right to petition for redress, when they think themselves abused.

You are not to judge a curious reasoning;—gentlemen, you are not to judge upon any particular fact;—you are not to judge merely upon the evidence brought against me;—you are not to judge upon those trivial matters brought forth to-night, which apply entirely to me; but you are to judge from the contexture of the whole. You are to judge from papers that are to criminate Skirving, Brown, Sinclair, Callender; and, as I understand there are a great number more against whom indictments are making out, these papers are to criminate all; and the contexture is to criminate all. He has wandered far from the indictment; he asserts of his authority,—however, it is but just that, while he allows you the talent of prying into the hearts of men, it is but right, he should retain some share of the same penetration;—and therefore with that sagacity which he claims, he says that our intentions were positively to join the invaders of Britain, let them be who they would; he does not name them; and then he desires you, in a most pathetic manner, to lay your hands upon your hearts, and see if such men ought not to be pronounced traitors to their country. Undoubtedly men doing so, would be traitors to their country; but how does he prove that that was our intention? He brings you forward far more convincing proof than written evidence; he brings you forward A BLANK to prove our guilt! He acknowledges that no notice has been taken of three prior conventions; and yet it will appear to you, gentlemen, by those who have attended these prior conventions, that this convention acted exactly upon the same plan; therefore the laws of the land were either asleep at that time, or they are over-vigilant at this. He calls us a set of French conventionists. I do not believe that there were five men in the convention that can speak French. I do not believe that there were five men who have an adequate idea of France; and it does not appear, from the evidence that has been brought before you, that any single member of the convention has any intercourse whatever with France; but yet it is criminal in us to adopt certain terms. Those terms, taken by themselves, he tells you, are not criminal; but take them, at this present crisis, altogether, form a mass of guilt which it really hurts him to mention, he is so tender. However, to support this allegation, he does not bring any proof; he gives it merely as an assertion; and which is as legal an authority, as he undoubtedly held those orders which he gave to Mr. Davidson, the sheriff substitute; and which, by-the-by, he acknowledges. He reflects upon me as being, or pretending to be an Englishman. Dare he doubt it, or dare he dispute it?—I have been, I acknowledge it, obnoxious to his uncle or father, or whoever he is, in London, and several other members of the administration;—those who profit by the spoils of the nation; those who once were friendly to a reform in parliament, but now they have got into the enjoyment of the good things of the treasury, seek no more that reform. Had I been a foreigner I should have been long ere now sent abroad under the Alien act.

Gentlemen, he alleges against me, as an article of accusation, a motion said to be made by me; and he then reverts to the testimony of Ross and Cockburn, and supports it by other charges of certain forms which Mr. Callender (who, it seems, has run from his bail in a most disgraceful manner) wished to introduce into the convention.—A reform of parliament, he will not admit—he calls it (but it remains for the nation to determine, whether he calls it rightly or not) a change of the constitution. A reform undoubtedly would make a change, but it would not be in the constitution; though, to be sure, a change from sickness to health, is so far a change in the constitution; but it is possible that you may recover your pristine health, and make no alteration in your former constitution; you only do away your disease; and that is the way in which a reform is meant to operate. He pleads much against universal suffrage, and annual parliaments. Indeed annual parliaments he touches more tenderly upon, and he is right. However, the same power that made them from annual to triennial, and from triennial to septennial, may very likely go on to make them for life, or even hereditary. But to show that universal suffrage has taken place, I will give you a quotation from a Scotch author. The lord advocate has said, it could not take place for the best of all possible reasons (and I have heard that twice in this court), because it is impracticable. A lord, learned in the law, and whose authority none here will deny, lord Kaimes, says that, "with regard to this matter one thing is certain, that the 'Regiam 'Majestatem' was compiled in the days of one of our Davids. The author, whoever he be, declares that he was commanded by king David, to compile this work, with the counsel and advice of his whole realm." There, gentlemen, you see it was not the advice of representatives; not the advice of individuals; but it was the advice of his whole realm. The same lord Kaimes does not fix a government, or a constitution to any one particular point. He does not tell you that the constitution of Great Britain, is the very best that ever existed from all eternity, as our learned

lord does; or that it will endure to all eternity; but he says, "Government is one of the arts which necessity has suggested, which time and experience have ripened, and which is susceptible of improvements without end. It must also be the privilege of every society to improve upon its government." There you see, gentlemen, there you see people of this country, that it admits of improvements without end; and therefore that which is good to-day may be better to-morrow. Lord Kaimes says, "it is the privilege of every society to improve upon its government;" and what signifies the privilege, if we are not to have the enjoyment of it. I will warrant the learned lord, that whatever privileges he enjoys, in his situation, he would not think them privileges, if he were debarred from the enjoyment of them. Then, why should a nation be deprived of that which would be a loss to an individual? Whose interest is it that the government should be good? Is it the interest of the few, or the interest of the many?—Undoubtedly it is the interest of the many. It is the concern of the many; and consequently the interest of the many. He continues,—"It must also be the privilege of every society to improve upon its government, as well as its manufactures, husbandry, or other art invented for their good."—Here you see if an improvement is admissible in an art, it is so in government. "No particular form therefore can be essential, as no particular form is preferable to another." This is a Scotch lord who speaks,—"unless by having a greater tendency to promote its end—the good of the society." Therefore, how excellent soever our constitution may be in its present form of three estates, and in the present most excellent, most immaculate way of electing members of parliament; yet, if there is a better mode of electing members of parliament, it is not only our right, but our duty to do it; yet meetings for that purpose are deemed seditious, although there is no overt act of sedition, but merely the construction of the public accuser: for the doctrine that he has pleaded is, that before a man is guilty you shall hang him, that he may not become a rogue.

Gentlemen, another great point is the committee of secrecy; that galls him sorely. Undoubtedly we ought to have told him what we were about. We said we had no secrets, and immediately after appointed a committee of secrecy. It is true, and there is no inconsistency in it. We had no secrets to go upon; our plan was perfectly constitutional, and must operate for the common good: but, at the same time, feeling ourselves under the arm of power; feeling ourselves to be militating against abuse all powerful, it was prudent in us for the present not to expose ourselves more than necessary; it was prudent to secure to ourselves a safe place of meeting. He has said, it would be rebellion, and an overt act of treason. As to that, I do not see how a secret meeting can be an overt act of treason. We should have been able to repair to the place of meeting secretly, because we knew every stretch of power would be made use of against us, and there is more than reason to suspect that the present war with France, is not directed solely against France, but against the cause of reform in England. It was meant by that war to divert the attention of the public from that cause, under the pretext of that ancient prejudice that that country was always our natural enemy. The numerous failures that are daily taking place; the numerous losses that we have experienced, both,—I am sorry to say it,—both by sea and by land, teach us that that war is far from being a profitable one; teach us, that we are farther off gaining our end now, than we were at the beginning of that war; for we are at this day less able to treat, or to treat on such advantageous terms with that nation we have so much despised, as we were at the beginning of the war. Ruin stares us in the face in every part of the kingdom. Every manufacturing town is labouring under the greatest misery. London shows no less than eight thousand Spitalfields manufacturers who are starving. Norwich, another great trading town (from which I have appeared in the convention as a delegate) is in so dismal a situation, that the poor-rates, which were at first, two years ago I think, or 18 months ago, but 3*s*. 6*d*. in the pound, now amount to the enormous sum of 17*s*. 6*d*.; and, by Lady-day next, they will be 20*s*. in the pound, owing to the present war.

Gentlemen, I hope you will not think it impertinent in me to follow the example that has been set me, of reading from a newspaper. It is not altogether so pleasing a fact to me, as that which the prosecutor stated from the Gazetteer was to him. It gave him satisfaction that it criminated me,—it gives me pain that I am obliged to criminate those who are in office. I will read to you a letter from a clergyman who visited the Spitalfields' weavers, and made a report of that visit. You will by this see part of the distress in which they are now plunged, owing to the war: it is a letter addressed to the reverend Mr. T——

[Reads it from Morning Chronicle as follows:

To the Rev. Mr. T.

Dear Sir;—You desired me to give you my opinion of the present state of want and distress among the weavers in Spitalfields. Being physician to the London Dispensary, where between two and 3,000 of them annually apply for medical relief, I am called frequently to visit their wretched habitations, there the first thing that commonly presents itself to view, is an empty loom, and a starving family. Some have had only half their usual work for more than twelve months

past; and many no work at all, for the last six months. Sometimes I find one or two children sick, and the wretched parents looking upon them with all the distress which parental affection, and the utmost degree of poverty, can impress on the mind. At other times, I find the husband and wife, and not unfrequently both, sick in the same bed, and several helpless and half starved children looking up to them for bread. Here anxiety and poverty increase the disease if they did not produce it, which however is often the case. It is impossible for words to give a perfect idea of the distress which prevails amongst this useful class of the people. If any doubt the truth of this representation, all I can say is, come and see. Were they to accompany me in my daily visitations for a short time, they would be fully convinced, that this is a very imperfect outline of the general misery amongst this part of the labouring poor, who would gladly work, if they could be employed; and therefore, the more deserving of help. I am persuaded, sir, that you need only to be acquainted with real distress, to interest yourself in the means of relieving it in the present instance. Both you, sir, and those who second your laudable endeavours and benevolent purposes, will be doing a good work.—I am, dear sir, your sincere friend,

Old Bedlam, JOHN WHITEHEAD.]
Dec. 17, 1793.

Gentlemen, I will also read you a paragraph, uncontradicted by authority, from the Morning Chronicle, of 1st. of January, 1793. The editor says,—"In one short month (December 1792), an innovation was made on the scheme of British society; and, in one eventful year, it has changed the character of the nation, from the happy condition of a people living together like one large family, under common laws; we were broke into sets, and put under the inquisition of clubs. Jealousy and discord succeeded confidence and union; the most honourable connexions; the most ancient friendships; the social and endearing intercourses of neighbourhood; nay, the ties of kindred were rudely, wantonly torn asunder; and the better to secure to us the calamities of a foreign war, we were involved in the more dreadful horrors of internal feud. In the short space that we can allot to this article, it is impossible for us to enter into the painful enumeration of the events of 1793. When the faithful historian comes to record them after passion and tremor have subsided, it will be found to be the most disastrous to constitutional liberty, to science, to morals, and to trade, that England ever knew, since the establishment of its freedom. What a reverse from the animating and cheering picture of our prosperity and happiness, which a liberal correspondent gave to the public, through the medium of this paper, on this day twelvemonth. The great events of the year have covered with distress the whole face of the island; the secret history of the period we neither fully can nor dare develope. It is sufficient to say that acts of persecution, unknown to Englishmen, have been practised with applause; integrity and friendship have been branded as unbecoming an exalted mind; and consistency in principles as unsuitable to the times. Opinion has been hunted into the retirement of families, and he who dared to manifest his public doctrines, has been assaulted on the side of his profession in life. The pulpit, the army, the bar, and the press, all furnish the shocking evidence, that Spanish and Italian arts may flourish on an English soil."

What is that but saying, that our constitution is greatly impaired within these twelvemonths? If we do not look to it, we shall have nothing but an Italian or a Spanish constitution left to us? How therefore are we to restore that constitution, but by a timely reform? and how are we to obtain that reform, but by pursuing it with vigour? and how are we to pursue it, if we are not to meet, and if an English jury will permit a public prosecutor (and believe every word he says) to throw an odium upon them; and say, that though their meaning may be good now, it may in future be bad; and therefore you must condemn them as seditious. As a farther proof, however, of the constitutionality of these meetings, and the right we have to revert to our original constitution, and to do away the existing defects of that which is termed the present constitution; and which in fact is nothing but errors engrafted on our constitution, I will read to you a letter from lord Bathurst to Dean Swift; although in his time the House of Commons was corrupt, since that time no great effort has been made to amend it; and we all know that human institutions, however good they may be in their first setting out, go naturally to decay, unless repaired. It has moreover been asserted, that one of the glories of our constitution is, that it is of such a nature, that it will admit of repairs, without being thrown out of order, and will always be advantaged by it; and that repair must come from the people; but hear what lord Bathurst says: "I am convinced that our constitution is already gone;" luckily for us the public prosecutor has found it again to-night, "and we are idly struggling to maintain what in truth has been long lost; like some old fools here, with gout and palsies, at fourscore years old drinking the waters," he was then at Bath, "in hopes of health again. If this was not our case, and that the

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people are already in effect slaves, would it have been possible for the same minister, who had projected the excise scheme (before the heats it had occasioned in the nation were well laid) to have chosen a new parliament again exactly to his mind? and though perhaps not altogether so strong in numbers, yet as well disposed in general to his purposes as he could wish? His master, I doubt, is not so well beloved as I could wish he was:"—You see that even in the time of lord Bathurst there were no greater enemies to the king than bad servants; for none alienate the affections of a people from a king, so much as bad servants of the crown.—"His master, I doubt, is not so well beloved as I could wish he was: the minister, I am sure, is as much hated and detested as ever man was;"—whether that applies to the present time or not, I leave the people of England and Scotland to discover, "and yet I say a new parliament was chosen of the stamp that was desired, after having failed in the most odious scheme that ever was projected. After this, what hopes can there ever possibly be of success? Unless it be from confusion, which God forbid I should live to see. In short, the whole nation is so abandoned and corrupt, that the crown can never fail of a majority in both houses of parliament. He makes them all in one house, and he chooses above half in the other, four and twenty bishops" very upright men "and sixteen Scotch lords is a terrible weight in one; forty-five from one country, besides the West of England, and all the government boroughs is a dreadful number in the other. Were his majesty inclined to-morrow to declare his body coachman his first minister, it would do just as well, and the wheels of government would move as easily as they do with the sagacious driver, who now sits on the box. Parts and abilities are not in the least wanting to conduct affairs: the coachman knows how to feed his cattle, and the other feeds the beasts in his service; and this is all the skill that is necessary in either case. Are not these sufficient difficulties and discouragements, if there were no others, and would any man struggle against corruption, when he knows that if he is ever near defeating it, those who make use of it only double the dose, and carry all their points further, and with a higher hand than perhaps they at first intended?" Therefore the poor reformer generally comes off the worst; as perhaps will be the case with those who are now at your bar. Gentlemen, since the days of lord Bathurst, the disorders of the state have gone on increasing, and we are now loaded with such an immense debt, that it is incomprehensible how the nation supports itself under it; and there are now forty millions more to add to it, for the sake of preventing a reform in parliament. A foreign war was entered into with that view, while the crown lawyers have been highly busy at home: words have been raked up of as far date back as a twelvemonth; spies set in private families; servants interrogated; the man has been set against his master, and the child against his parent. Every art has been used to bring forth criminal prosecutions, in order that reform may be discouraged in every shape; and that those, who had been the foremost in attempting any thing like reform, should be stigmatized as seditious,—treasonable,—as ringleaders;—these words you have vociferated again and again, till they must have tired your patience.

Gentlemen, here is a statement of the national debt, which perfectly applies to the case in point. The national debt began with our happy revolution, which we are all bound to praise; and would to God the constitution was as sound now as it was then. The national debt was a scheme devised by William and Mary, to secure their footing in England. At first it amounted, I believe, to seven millions; but during that reign it increased to sixteen millions, and the wars of queen Anne increased it to fifty-four millions—the amount of the debt at the end of the war of 1748, was 78,250,000*l.*; the amount of the debt at the commencement of the war 1755, was 75 millions; after that there was a diminution took place of about four millions, which were paid off. At the end of lord Chatham's war, the national debt amounted to 146 millions; it diminished by the peace to 136 millions, so that a peace, which lasted till 1775 diminished it ten millions; and in the war from 1775 to 1783,—the infamous American war,—where you will recollect the Americans were first treated as rebels, exactly in the same manner that the French are now treated; they were deemed rebels; they were deemed a set of villains; they were deemed the worst creatures upon the face of the earth; and whenever they were spoken of, it was one Hancock, one Adams, one this, one that, and one the other, till we found, at the end of ten years war and expense of 134 millions, besides 100,000 lives lost in the war, we were obliged to give up the war, and accept of an ambassador from them: and, at the time of Mr. Pitt's accession to the treasury-bench it amounted to 270 millions. At this present day it is upwards of 300 millions; and, if we go on thus year after year, we shall soon make it 400 millions. But the remarks in this paper are more apposite to the point:

"So immense a debt as 270 millions, bearing an interest of about nine millions and a half, was an alarming circumstance to the public, after the loss of half the British dominions abroad; and something must be done to divert the attention of the people from any serious inquiry into the corruptions and abuses which had involved the nation in such ruin.

"Mr. Fox was for probing this ulcerated wound to the bottom, and meeting our situation in an open, manly manner, but the secret junto in the cabinet;" and that junto, gentlemen of the jury, I will tell you originated in Scotland. I know not at present, whether it

continues its root there or not; I am much inclined to think it does; but the secret junto "foresaw, that such a measure would lead to impeachments, refunding and confiscation of property. He was therefore turned out of office, and Mr. Pitt seduced from his friends and party, to become the tool of those who began to be alarmed for fear an investigation should take place." Here then Mr. Pitt is only the ostensible minister, while in fact he is ruled by a secret juncto. "A bubble was invented to amuse the people, and stop the mouths of the monied men, the weakest that ever was formed, and the most ruinous and wicked one that ever succeeded. The understrappers in office," in England, gentlemen, we have understrappers in office as well as in Scotland "and treasury runners, were incessantly employed in blacking Mr. Fox, and circulating in every company, that Mr. Pitt was to pay off the national debt. The measures he adopted for that purpose were cried up as a master-piece of wisdom; and this was again rung in the ears of the credulous people in every corner of the kingdom, by the prostituted prints in the minister's pay. By such means, this extraordinary bubble was blown up to an enormous size, and the troubles in Holland and France, as long as we kept in peace with the last mentioned nation, were favourable to these measures. The prodigious demand for our manufactures, the increase of trade——"

I was in France, gentlemen, between three and four years ago upon a mercantile expedition. I had an opportunity of viewing all the great warehouses in France, from the northernmost extremity, to that very southernmost point of Toulon, which we have lately abandoned; and I will tell you, that in one small town, not so large as Leith, there was at that time English goods bespoke, and in a great measure paid for, to the amount of three millions sterling; that kept our manufactures afloat; that gave prosperity to the nation; and that was in consequence of the commercial treaty which was entered into between the two countries about five years back, and in which I am not ashamed to say that I lent my humble assistance, not officially to the minister here, but unofficially to the minister in France; because I knew the commercial connexion of two nations was the way to enrich both, and because I knew that to do away that idea, that they were natural enemies, and should go to war upon every trivial occasion, was the only way to keep us in peace, and prevent the shedding of blood, which I am always sorry for in any case whatever; I wish I could say so of our governors;—"the influx of money from France, Holland, and the convulsed parts of Europe, gave ministers an opportunity of levying enormous new taxes, even in time of peace," while we were pretending to pay off the national debt, every year brought us new taxes; why? Because a majority in the House of Commons was to be secured. "Mr. Pitt took every advantage that all these favourable opportunities gave him, and loaded the people with such heavy, partial, and grievous taxes, as no minister ever before attempted, even in times of war." I doubt not, people of Scotland, but you labour under grievous taxes, as well as we in England; there is one I will give you an idea of, the salt tax, which flies in the face of common sense; but it is kept up for a reason which I will tell you by-and-by; the collection annually amounts from 19 to 20,000*l.* but the expense of collecting it amounts to 30,000*l.* People who are unthinking may say, why does not the minister sell it when he loses so much by it; it gives the ministry at the trifling expense of 11,000*l.* per annum, it gives them a patronage of 30,000*l.* "Mr. Pitt's shop tax, fustian tax, his tax on the poor servant maids, the extension of excise-laws, his commutation tax, and others equally obnoxious, are witnesses of the truth of what I now advance; with all his low cunning, artifice, exertions, spies, and informers."

Gentlemen, the convention is reproached with adopting French words, and French manners. It is now about six years ago that the commercial treaty was, I must not say on the tapis, but was pending in the case I mentioned before, in which my humble efforts were used; I had access to some of the dependents of the French ministry, and I there found that in Pitt's cabinet there was a system of police;—I made use of that word, which is adopted in Ireland, in a great measure in London, and very likely will be soon introduced into Scotland, if not already—the French police; Pitt applied to Bretagne, and from them obtained every article of the French police, spies, and informers, and every thing except the Bastile; they had but one, and they could not spare that one: however, we have made shift without it, having converted Newgate, and the Counter, and other prisons to that purpose, until a proper one shall be built; there is one building in the neighbourhood of London, and I think I have seen something like one building in the neighbourhood of Edinburgh; he has imported spies and informers, who have exerted themselves, and every one of them has been well paid for it; spies and informers,—French things as well as French words. And I believe the nation, at that time, though much degenerated, I have reason to believe, that at the first outset of spies and informers, the police of England were at a loss to find Englishmen willing to undertake those odious tasks: sorry I am to say, that that repugnance is now nearly done away, that there is not a public company without a spy in it, and even the servants of the crown glory in their having spies; some are more diligent than others; I saw one here to-night, who, though he keeps six spies daily, it is no uncommon thing for them to regret, at the end of the week, that they have brought him no

intelligence; backed with the most extensive commerce ever known, our manufactures and internal trade, pushed by industry, private credit, and paper currency, to a pitch never before heard of; and, in short, the whole credit of the merchants, traders, and manufacturers, exerted to the utmost, to keep every hand usefully employed, was not sufficient to raise taxes to pay the interest of so immense a sum as 270 millions of national debt, defray the expenses of government, which, together with the interest, amounted to the enormous sum of about 17 millions in time of peace, without reckoning the millions to be annually provided to support this bubble; all this, notwithstanding the flourishing state which peace and the unexampled industry of the people to revive our trade and commerce, could not be annually drawn from their labours, nor raised by any of the oppressive means adopted, without borrowing new loans; on one hand, as stock was purchased with the public money, on the other, that is to say, in paying the national debt, you took the money out of one pocket and paid it into the other; but while you did that, some of it always fell to the ground, which you never will see again; that money is employed in keeping up the price of stocks; some thousands go weekly that way; a reform in parliament would do away that abuse. "The Bank, that sacred, public, and private repository for wealth, was squeezed out of half a million. This drew on them creditors for the unclaimed dividends to a much larger amount, and other means, equally unjust, were pursued to supply the deficiency. But all this would not do; the bubble must sooner or later burst, and with a dreadful explosion, unless speedily prevented by a more skilful financier than Mr. Pitt." This bubble does not only threaten this empire with the most terrible convulsions, but to spread mischief into other countries. We have been told, that the Bank of Amsterdam, is intimately connected with our own; if that fails, ours will, and that was given as the reason for our going to war; and very likely our going to war will be a reason for our bank failing: "it is formed on such ruinous principles, that it is impossible all the energy and industry of a brave, hardy, and loyal people, when strained to the utmost pitch, can support it; it was setting the public to roll a heavy stone up a steep mountain, which grows steeper and steeper as the summit is approached. To attempt to pay off the national debt by purchasing stock, is one of the most barefaced robberies."—Here is language! this in Edinburgh would be sedition; it would go near to be treason—"the attempt to pay off the national debt by purchasing up stock, is one of the most barefaced robberies committed on the people, that ever was attempted in any civilized nation."—Here you see Mr. Pitt is called a robber, and the most barefaced and impudent robber that ever was, "loading the people with unbearable taxes, to enrich whom? the stockholders, the monied-men, and gamblers, in the Alley; these were sure to assist the ministerial runners in blowing up this bubble, which brought so much grist to their mill; by their united arts and unwearied efforts, they actually raised the price of stock to such a pitch, as to make the public pay more than 30*l.* sterling more than the intrinsic value, upon every 100*l.*" And as long as the industry of the people could bear such burthens as were heaped upon them, there is every reason to believe they would rise higher and higher; so that the more the public purchased, the more they would have to pay for the remainder, providing this bubble was suffered to continue. Mr. Pitt, instead of paying off any part of the national debt, in time of peace, by his plan, has added many millions; and if we are to go on in this ruinous plan, the increased price of the stock will load us with more than 150 millions more than was ever owed or pretended to have been borrowed.

There, gentlemen, in consequence of this system, the nation will find itself debtor 150 millions more than ever was pretended had been lent to it; an immense sum of itself, but which the nation would have been barefacedly robbed of—150 million sterling which we never borrowed. "It will easily be seen, by examining the History of the Revenue, or this brief statement, that every war which this country has been engaged in has nearly doubled the former debt and taxes, let them amount to what they might; and yet the nation has been plunged into a war, with this heavy millstone of 270 millions about its neck. The effects of this rash measure has been suddenly and severely felt; almost a total stagnation in trade and commerce, the revenue decreasing in the most alarming manner, all private credit destroyed:" the neighbourhood of Edinburgh will witness that: look at Paisley, look at Glasgow, and their banks even, which will all convince you that there is truth in this assertion; "no one dare trust his neighbour, bankruptcies innumerable, the industrious poor thrown out of employment."—Do we not see that even in Edinburgh, the poor are ready and willing to work if they could get it? Are they not the same at Paisley? are they not the same at Glasgow? I have already instanced to you in England, Norwich, Sheffield, and Manchester, where the poor are out of number; but here is an addition, "provisions, and even hay, sent out of the kingdom, to supply the German armies," not to supply our own troops, but forsooth, we must take other troops into pay, while our poor are starving at home in consequence of it, "which keeps up the price of meat to a height never remembered at this season of the year; coals, candles, soap, sugar, and many other articles in common use, are raised or kept up, in consequence of the war." Here is an artitle to

which I would turn your attention, the article of coals; the city of London yearly consumes about 400,000 chaldron of Coals; every chaldron of coals pays one shilling, to whom? To a man who did not think proper, when cited by the laws of his country, to appear before you; and pays it to him, why? Because he is the descendant of a natural son of Charles II. If he had been a poor man, and it had been necessary to keep up an appearance of respectability in his station, there would have been some excuse; but he has another sinecure which amounts to more than he spends; this is one of the abuses of a corrupt parliament.—Our money shipped off to pay the troops, and supply the beggarly German princes on the continent. The parochial taxes prodigiously increased, by the numerous poor thrown out of employment, or borne down by the heavy load of taxes Mr. Pitt has thrown upon them; and threatened, notwithstanding all that is said to the contrary, with the ruin of another American war. In such a state, is it possible to expect that the public can bear to double the present national debt and taxes, without bursting Mr. Pitt's bubble, formed for plundering the poor to add to the rich. This man speaks very plain English, and I am sorry to say, he speaks as truly, as he does plainly; it has been a decided plan with those in power, to plunder the poor to give to the rich; and will continue so, while useless places, while useless pensions, are suffered to exist, while a lord justice general of Scotland, who never attends in his place, though justice is the most sacred duty a man can acquit himself of; the duty of a judge is the most sacred duty that a man can undertake, since it is the representative of God himself; that he should accept 2,000*l.* a year, and never attend in his place, to distribute that justice for which he is so amply paid; this is another proof of sinecure places, and a proof that we want a reform in parliament; you have now been a hundred years, except one instance, without the appearance of a lord justice general; 200,000*l.* therefore has been carried out of Scotland and spent in England; therefore you annually lose 2,000*l.* for which you derive no advantage whatever. "The crisis draws near, when every inferior consideration must give way for public good, and Mr. Fox's open and manly abilities must be called forth, to form an honest, just, permanent, and upright ministry, to save the king and people from one common ruin."

I did not read this to you, gentlemen, with a view to trumpet up Mr. Fox: no man can have a greater respect for his abilities than I have, but I am far from thinking that no man in the kingdom can save us but he; I would not make any man a God; let us not trust them; let us not give them implicit faith; let us trust to none of our rulers; let us trust only to our laws; and while we give implicit faith to them, and see that our rulers act according to those laws, we shall be happy: the moment we do otherwise, we shall be slaves. "Apostates have raised false alarms of treason, sedition, rebellion, and every thing that can rouse up a generous people, to revenge the insults and injuries heaped upon them; but the people are loyal, love their king, respect mild laws, and bear an utter hatred to all who attempt to impose upon them, by apostacy, fraud, or treachery, and are sworn enemies to all sorts of persecutions." Would not you think that the writer of this letter had some of the persecutions which have lately taken place, in his eye? You will see then, gentlemen, that it is not merely in Scotland alone; that the people in Scotland are not the only people who see their true interests; that the people of England, likewise, begin to discern that they are imposed upon, that those who are in office deceive them: open your eyes, therefore, gentlemen, and be not deceived; let not the words of office, let not the high sounding language of a crown lawyer trepan you into a perjury, for if you suffer yourselves to be deceived, though not a wilful perjury, it still remains a perjury, unless you give a verdict according to the dictates of your conscience; and the dictates of that conscience cannot take place, till you have made a fair and candid examination of the matter before you.

His postscript says, "two hundred and seventy millions is a sum the human mind can hardly form any idea of: to give some assistance in forming a notion of it, were it to be laid down in guineas in a line, it would extend upwards of 4,300 miles: if in shillings, it would extend three and an half times round the globe; and if paid in solid silver, would require more than 60,000 horses to draw it, at the rate of 1,500 weight to a horse;" and yet the good people of this country are, by their labours, to pay off the interest of this debt, and are with the assistance of Pitt's calculations, to pay off the capital also. The number of inhabitants of Great Britain has been mistated, as well as many other things, by the public prosecutor; he has stated them to be 10 millions; they perhaps, do not go much beyond 7 millions; but we will say 8 millions, and among them, you cannot say there are more than 2 millions of men; and, therefore 2 millions of people are to pay the interest of this debt, which, if laid out in guineas, in a line, would extend upwards of 4,300 miles. Good God! when shall we get to the end of such a journey; and yet we are daily increasing it by a war; and, what is the consequence of that war? not only expenses abroad, but it increases salaries and pensions: we bought Toulon with gold; we left it for nothing: it is true, we adopted again the French measures; we named commissioners: one commissioner set out, with a service of plate, to do honour to the name of an Englishman,

which cost 8,000*l.* and yet there are 8,000 Spitalfields weavers in a state of actual starvation; and yet, to one man, is presented a service of plate, of that immense value, previous to his going as commissioner to Toulon; he comes back again, and is now out of office, but has retired upon half-pay: this is the way the public money is squandered; this is the way the public money will be squandered till we obtain a reform in parliament. Therefore, no man, not the public prosecutor himself, can love the constitution better than I do; but no man can detest the abuses that are engrafted on that constitution more than I do; for I have seen so much misery, in the course of my tours through Great Britain, which is the garden of Europe, where there is not a man who would exert his industry, but might earn a comfortable livelihood if our constitution was returned to that point at which it was settled at the revolution; but it is all done away; I will give you proof that it is done away; and I have taken care to give you that proof, or, at least, that each of you may be furnished with a copy of it when you retire to debate upon the matter that is brought before you: it is in a speech of Mr. Wharton's, in the House of Commons: I will read it to you; and I am sorry, that the public prosecutor has retired; I would have attacked him personally; he was a member of the senate; and, I believe, he was there at the time he bore, he suffered this worthy man,—an honest member in the present British House of Commons,—he suffered him to assert, that every part of our constitution was done away; he did not rise to contradict him; though here vociferous to the utmost, there he was silent; I am seditious in seeking a reform, but, when a man tells them, every iota of the constitution is done away, the whole he could do was, to vote silently against him; and the motion was lost, because the majority did not think proper to stake their future fortune, reputation, or property, upon the revisal of the constitution. May a friend be permitted to read it for me?

Lord Justice Clerk.—No, you must read it yourself.

Mr. *Margarot.*—Gentlemen, you are entrusted now by your country, to give a verdict, to examine seriously the cause that is now before you. I have already told you, I am a willing and a devoted victim; I will give you a proof of it; and you shall have that proof home with you, in a letter, that I wrote to Dundas, a twelvemonth ago, when prosecutions were hanging over the heads of the people: I offered myself for prosecution; I desired him to spare them, and let his vengeance fall upon me: I escaped it in London; I hope I shall not find it in Scotland; I hope the honesty of any jury will prevent its having the effect it was meant to have. This is the speech of Mr. Wharton, in the House of Commons. Mr. Wharton rose to make his proposed motion. "We heard," he said, "on every side, of the glorious revolution, in 1688, and of the constitution, as settled at the glorious revolution; it was a note which he had always listened to with pleasure, and he repeated it himself with rapture. But, what was the rational foundation of our satisfaction, at the recollection of the glorious revolution? It assuredly was not that the possession of the throne, and the regular hereditary succession to it, were, at that time, disturbed and interrupted. It was not that we expelled one king, and one family, and appointed another king, and another family, in their room. The necessity of such changes was, at all times, to be deplored; and, the events themselves could only be justified by the necessity. The only rational foundation of our approbation of that revolution must be, that at that time such principles were confirmed, and such wise and wholesome provisions made for our constitutional security and happiness, as might prevent all future necessity for a similar revolution. Whoever approved of that revolution, declared, at the same time, that the constitutional provisions then obtained, were wise and wholesome provisions; that they were worthy objects of a national struggle; that they not only justified resistance, but made it meritorious;" And yet, this is one of the articles of crimination against me.

Gentlemen, it is said that the convention meant to assert their rights: now, assertion may be made in various ways; it may be made, *vi et armis;* it may be made by argument; by reason; and, there is no direct proof, that we meant to assert them by force of arms; and, from the paucity, it is most likely we should do it by argument. He says, "they not only justified resistance, but made it meritorious; and, that they were cheaply purchased, at the price of all the blood that was shed upon the occasion, as well as the dethronement of a guilty king, and the extirpation of his guiltless family. But an approbation of that revolution went still farther. It declared, that if, by any means, by force, or by fraud, by violence, or by corruption."—Jurymen, I request your utmost attention to this; it is of the greatest consequence. "But an approbation of that revolution [1688], went still farther. It declared, that if, by any means,—by force, or by fraud, by violence, or by corruption,—if these wholesome and necessary constitutional provisions should, by any means, be taken away, or frustrated, the same objects would again justify the same national struggle, and the same extremities, unless they could be recovered, and re-obtained by more gentle, more peaceful, and therefore, more happy means." We at present feel, that force or fraud, violence and corruption, have taken away many of our privileges: we wish to regain them; not by force, but by these more peaceful, and therefore, more happy means, which is a peace-

able and rational application to the king, or to the parliament, by an assertion of our rights, made in such a respectful manner, that they shall not be refused; for, it is idle to talk of the omnipotence of parliament; the servant can never be greater than its master; the three estates together, are not equal in value to the whole nation: without them, the nation could be a nation; but, without the nation, they would become poor individuals. "He asserted [and said he risked nothing by the assertion, for no man would be hardy enough to deny it, and he pledged himself to prove it in a committee of the house], that all that was valuable to the people of this country, all the provisions which were stipulated to secure the peace and prosperity, the individual liberty, and the general property of the people of this land, had all been, since the revolution, taken away—All!" He asserts, in the House of Commons, and pledges himself to prove, that all the security of the subject, all the privileges of the subject, in the constitution, which is trumpeted by venal hirelings, has been taken away; and he pledges himself to prove all this; and, to this, not a single man rises to give an answer. "He must entreat the attention of the House, for a few moments, whilst he very briefly brought back to their recollection, what this country established by the revolution. First, to avoid all future mistakes, and, that the contract between prince and people might be clearly understood, the revolutionists began by altering the oaths of the contracting parties." Here again I will interrupt myself, to show you that the king holds his crown, not by a divine right, but by a contract between him and the people, which implies a mutual binding; and, should either of the contracting parties fail, it will become void: men in business, you must know it; and, from business to politics, is a very easy transition; the principle is the same. "They altered the coronation oath for all future sovereigns in this realm; and they altered the oath of allegiance for themselves, and for all future subjects. They cut up, by the roots, the damnable doctrine of passive obedience and non-resistance:" doctrines sedulously endeavoured to be inculcated into you to night; that non-resistance and passive obedience, though couched in other words, were the duty of the subject. I say it is no such thing; and here is an honest man declaring this in parliament, and nobody daring to confute him. He says, "they cut up, by the roots, the damnable doctrine of passive obedience, non-resistance, by emphatically specifying and ordaining the following words of their former oath, 1 William and Mary, ch. 8. I declare, that it is not lawful, upon any pretence whatever, to take up arms against the king, &c. &c. should not, from thenceforth, be required or enjoined." Therefore, you see, gentlemen, that it is no longer required of the subject to take an oath, that he will not, in any circumstance whatever, take up arms against the king; because, as this king comes to the throne, not by divine right, but by a contract between the king and the people, it was thought, if he neglected his contract on the one part, the people were not bound by that contract on the other; and, he hereby establishes the doctrine of resistance to oppression: in fact, self-preservation is the first law of nature with an individual; and, what is the case with an individual, is much more so with a society. "It was not so much to relieve the conscience of the subjects, that these words of their former oath were selected, recited, and abolished; for no oath of slavery ever did, or ever will, or ever ought to bind a nation, or an individual; it was something worse than perjury, or sacrilege, to keep an oath of slavery." Here is the true spirit of freedom, breathing in these words: it was something worse than perjury, or sacrilege, to keep an oath of slavery. No; man was not born to slavery. "This alteration was made to prevent the future sovereigns of this country from being misled, as the four preceding sovereigns had been, to trust to a senseless superstition about royalty, which though many persons for their interests have professed, no man of common sense ever entertained." Many of these doctrines are professed at this day: men profess doctrines very different from what their hearts feel; but while blinding the eyes of the public, they are the most conscientious men living. "Their next care was, to provide for the due administration of the executive power, and the responsibility of its confidential advisers. They therefore enacted, 12th William 3d chap. 2, that all matters and things relating to the well-governing of this kingdom which are cognizable in the privy-council, by the laws and customs of this realm, shall be transacted there; and all resolutions taken thereupon shall be signed by such of the privy-council as shall advise and consent to the same." Here you see, gentlemen, that the government of a large country, like Great Britain, is of so public a nature as not to admit of secrets; it is of such a nature that a responsibility must be affixed somewhere; and therefore those persons who adopted measures in the privy-council were to sign the same, in order that the public might know where the blame or the praise lay; this has been done away, and you have heard to-night, when a question was put relative to orders, those orders were deemed proper to be kept a secret; thus we imitate the practices of those in higher stations; and inferiors will naturally catch at the defects sooner than at the beauties of their masters behaviour. "Thereby guarding, as far as laws could guard, against that accursed engine of despotism, a cabinet council,"—which the paper I just now read, calls a secret junto,—"or that more accursed instrument, an in-

terior cabinet," from which we have not been free for 25 years.

"Their attention was next directed to the double representation of the people, the only possible security for all their other provisions" —There is undoubtedly no provision, no security, for the liberty, for the property of the subject, if he is not properly represented in parliament: we are too numerous to make laws for ourselves; we must therefore be represented; we must send delegates or commissioners to a parliament, where a convenient number of them may meet and transact the business of the nation; if that business is not done faithfully; if the men sent to do that business are liable to be bought and sold, we shall in our turns pay both purchaser and purchased—"The House of Commons and juries." This is the double representation in England; we were the only nation who enjoyed it. A neighbouring nation, though much run down, have lately arrived at the possession of it. Juries consist of 12 or 15 men, according to the country in which they act. They are not to stand in fear of the judge, or in fear of the king; for, if they act according to their conscience, no judge dare say any thing to an honest jury; they have a double duty; the first to God, and the next to their country; but they both of them form a moral duty, and are one and the same thing. Jurymen are absolute; they have a right to ask questions; they have a right where the least doubt hangs over the mind, to inquire of the panel; they have a right to inquire of the counsel, and they have a right to call forth all the wisdom of the judges; while in office, they possess the most unlimited power that we know of in England. He says our ancestors "passed over untouched, and left as they found them the nobility and the church; they were considering the solid and substantial parts of the constitutional edifice, and did not much concern themselves about the gilding and the varnish. They therefore proceeded to establish the principle of a fair and free and frequent election of the representatives of the commons in parliament, as might be seen by a reference to the acts passed in the first and second and third years of William and Mary." You see here, a term which at first appears to be a kind of sneer or joke, but it is founded in truth, and leads you to a much deeper reflection. He says, "our ancestors did not much concern themselves about the gilding and the varnish," meaning the nobility and the church; and it is not merely a jeer or a playing upon words, but arises from the principle already laid down, that the nation, and the nation alone, is the principal part: it is the people that are of consequence, and nothing but the people. "And having thus, as they imagined, provided for the real election of the representative body in parliament, they secured the independence and integrity of that body after its election, by enacting, that no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons." Now, if this took place with regard to the national assembly, where laws are only made; undoubtedly a similar restriction was understood to be in full force in that assembly, where the laws are carried into execution, I mean in juries; for if men enjoying places of profit under the crown are deemed incapable of making laws, they should, by a much stronger reason, be deemed incapable of carrying them into execution, especially when there is no appeal from their verdict; or at least, an appeal, attended with such difficulties and such expense, as to put it out of the power of nine-tenths of those who are tried to make use of the remedy. "Having thus secured the purity and independence of the people's representatives in parliament, they proceeded to the other important branch of their representation by jury, and they decreed, that juries should be fairly taken without partiality, and should act freely without influence." Observe that, gentlemen; I do not impute it to the case of to-day, but when I say it is possible to pack a jury, I can show my authority, when it has been asserted in the House of Commons and has not been denied. "They also decreed, that excessive bail should not be required, that excessive fines should not be imposed, and that illegal and cruel punishments should not be inflicted; and to secure these objects, they ordained that thenceforward the judges' commissions should be made 'quamdiu se bene 'gesserint;' and that their salaries should be ascertained and established, in order to make the judges independent of the crown." The duty of a judge is, not to influence you, not to say any thing that has the least tendency to influence you; he is to explain the law in any difficult point to you, but by no means to give you his opinion upon the case; he is merely to state the law, and say always, hypothetically, if the man is guilty of the offence, such and such punishment is due to it; but he is never to say let me beg of you to say so and so; it is illegal, it is the highest pitch of wickedness in a judge so to do. "Now, all these provisions (the objects and consequences of the glorious Revolution) would have no value, they would be nugatory and worthless; they would be a mockery, unless they were effectually to obtain and secure to the people of this land these three important points. First, An honest and responsible exercise of the executive authority. Secondly, Real, independent, and faithful representatives of the commons in parliament. Thirdly, A fair and impartial administration of justice in the courts of law. We who had no predilection for any family whatever (except as connected with these objects) in the words of our ancestors at the time of the Revolution, did now again claim, demand, and

insist, upon all those as our undoubted rights, the true, ancient, and indubitable rights and liberties of this kingdom, 1st, William and Mary, chap. 2. If then by various means it has happened (as he asserted and undertook to prove in a committee of this House), that this provisional responsibility of the privy council no longer remains; that the election of the House of Commons is neither fair, nor free, nor frequent; that this provisional independence of its members is gone, and that the House at present, swarms with persons having offices and places of profit under the king, and receiving pensions from the crown; that juries are not fairly and impartially taken; that they do not act freely and without influence; that excessive bail may be, and has been required; that excessive fines may be, and has been, imposed; that illegal and cruel punishments, may be, and have been, inflicted; that the judges are not independent of the crown; that pensions may and have been, granted to some of them; and that lucrative offices may be, and have been, conferred upon others; by which means it cannot be said that their salaries are ascertained and established—If these facts were so, he held it to be the duty of all those who, without hypocrisy praised the Revolution"—Most men, perhaps all men, praise the Revolution, but they do it with various intentions; but he speaks here only of those who praise it without hypocrisy. He says "he held it to be the duty of all those who without hypocrisy, praised the Revolution, to endeavour to return us again to our constitutional situation at that period, and to recover those lost or neglected provisions, that so we might effectually secure to ourselves and to our posterity, what our ancestors endeavoured at the Revolution to secure to themselves and to us." I hope that single passage will be sufficient to do away all the criminality of the word assert, in the indictment. It may be done in two ways, by force, or by argument; in either case it would be justified by the present glorious constitution, taken not ironically, not insidiously, as it is taken by some, but literally, according to the truth. Our glorious constitution permits us to assert our rights, and even permits us to resist oppression: however, from the tenor of the proceedings of the convention, you will see that arms were the last things we should have thought of; being little inured to arms, and being a small number to the bulk of the nation, I mean the associated men, who have sent their delegates to the British Convention; and from what has happened to-day, you will see that the public mind is panting for reform; and I hope, gentlemen, if your countenances deceive me not, that you all, or the greater part of you, wish for reform; an amendment can be attended with no ill consequences. Mr. Wharton concluded with moving, "That a committee be appointed to inquire whether any, and which of the provisions made by parliament in the reign of William and Mary, and in the reign of William 3d, for securing the responsible exercise of the executive authority; for securing a real, independent, and faithful representation of the Commons in parliament; and for securing a fair and impartial administration of justice in the courts of law; whether any, and which of these have by any means been invalidated or taken away: and to consider whether any, and which of those lost or invalidated provisions may be fit to be re-enacted and restored, in order that the people of this land may recover that situation and security in which they were placed by the glorious Revolution in 1688."* This motion, I have already told you, was lost, and it was lost by a majority of 71 silent men, against 11 honest men who supported it; but the 71 did not utter a single syllable, though I firmly believe that the lord advocate was in the House at the time: if he was not there, his master, his father, his uncle was there, and not a word was said; they put it to the silent vote, and numbers carried it, which shows you what chance we have of obtaining, by a humble submissive petition to the House of Commons, any redress; it shows you, that if we want to obtain redress we had much better go to the fountain of redress, and apply, in the first instance to the king; but that is a thing that is matter of opinion; however, it requires consideration; and when the matter of reform comes to be more public, which I hope it will, it will then bear ample discussion.

Gentlemen.—I have, I believe, in the former part of my defence, mentioned to you, that the lord advocate, not being able to substantiate his charges against me upon written evidence, was forced to draw in a more powerful aid; namely, a blank, as a proof of criminality; he has laid great stress upon it; he has turned about in it like a horse in a mill, and though he went back from it once or twice in the course of his speech, he was sure to return to it again. He has likewise sought to attach a great degree of criminality to the words convention of emergency, which is a simple English word, signifies a case of great moment, a case that requires speed, that requires immediate attention, that requires all the exertions we can possibly bestow upon it; therefore strip it of the epithets seditious, malicious, felonious, and all these high-sounding words, and you find nothing in it unjustifiable whatever. He has also sought to criminate me, with charging that my friend Browne gave a history of the Habeas Corpus act; and he has wished to attach more than sedition, a kind of treason, to the bare mention in the convention of the wrongous imprisonment act; surely, if such an act exists, it is competent to every subject of the realm to see that

* See Mr. Wharton's speech and motion on May 31st 1793, in the New Parliamentary History, Vol. 30. p. 961.

it is secured to them; that it was (as I presume all acts are) made for the benefit of the public, and therefore it is natural that men should be anxious that those benefits should be retained to them; yet it should seem that the bare mention of such a thing is treason in Scotland. It galls those in power to think, that they have got a power above them; that they are not entirely above control; but I have already said, that there is not a man in the kingdom above control; even the king holds his crown by a contract, and therefore is not above control? he is not above the laws; he is not, indeed, responsible; the fiction of law says, he can do no wrong, because his contract holds no longer than he abides by the constitution of the kingdom; the moment that he would attempt, as a James, or a Charles 1st. to break the contract between him and the people, the moment he had broken that contract, he would then no longer be unaccountable to the people; on the contrary, it is most likely, the people would call him to an account, as they have done in other cases before, when they have ventured to ride paramount over the laws. The laws are made for the weal of the nation, and are of more importance than any individual, in whatever rank society may have placed him; they are of more importance than any individual, for without laws there is no society; and without any individual whatever, the society may still remain a society.

Gentlemen.—I will now come to the mere points of the indictment; for the speech of the public prosecutor has wandered greatly from the mere facts stated in the indictment; however, I was obliged to follow him, inasmuch as he did me the honour, on Monday last, of trying me before another jury; for it was me more than Skirving that he tried; it was me he had continually in his mouth, and to me that a great part of his speech then applied. He taxes us with holding delusive republican principles, and he builds his crimination upon our having adopted certain words, which he seems to think were never in use in England before the revolution took place in France; he is, however, much mistaken, for there is not a schoolboy but can tell him that *section* was as much in vogue, and made use of in England, twenty years back, as it is now. There is not a writ for the return of a member of parliament, but has the word citizen in it. The word citizen is in all the students cards; and even the pin-makers of London are obliged to have the word citizen in their cards; therefore it is not an adoption of any thing new. As to regulations and orders, if they are founded upon French principles, for God's sake give me French principles; and that we were regular and orderly, I will take the liberty to prove to you. By the regulations that I will read to you, you will see that we were far from having any seditious or disorderly principles about us; but that we were organizing ourselves into the most regular body in the world; and, I believe, even freemasons themselves, who have regulations and secrets, and I believe some of their committees are pretty secret, meet together, and therefore are guilty of all the crimes I am charged with; and I do not know that there is so much regularity even in their proceedings, as there was in our's:—"The convention shall henceforth be called, The British Convention of the Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments. The delegates to this convention shall be elected annually, on the of , and shall meet where the secretary and intermediate committee shall think most advisable for the general interest."—You see it is for the good of the generality; not for the good of one description of men; not for the good of the opposition, who are endeavouring to oust the ministry, in hopes of getting into their places. No, let us oust the abuses, and restore the constitution to the state in which it was in 1688.—"The secretary and intermediate committee may, at any time, call a convention of the delegates, on 14 days notice; but they shall be responsible for a proper exercise of this authority. The convention, after electing a president by show of hands."—Here we call him a president; that is not a French word. I fancy that is a word that has been used in England for these 50 years back, and I cannot attach any degree of criminality to it, because we did not put it in the power of a man to say, he was sent by a certain number of people, unless he was intrusted with the confidence of those men, for the purpose of a parliamentary reform, as I will show you by the instructions that I brought from London, which I have in my pocket, and which escaped the inquisition.—"The convention, after electing a president by show of hands, shall proceed to the verification of powers, and then to the division of the convention into sections, in such manner as shall hereafter be provided."—Here follows the head of office-bearers. The public prosecutor told you, he could not tell what this preses meant; this will explain it:—"There shall be a president or preses, three assistants, a secretary, a treasurer, and door-keeper. The three assistants and the secretary shall form a council, to be denominated the council of the table. The office of the preses is to maintain order, to take the sense of the convention on all questions to be determined therein, and to declare on which side the question is carried, to call on the committees for reports, &c. and to sign all public acts."—You see there is nothing seditious in the office of preses; unfortunately, that night there was no public act passed; I kept order, or endeavoured to do it, as well as I could. I took the sense of the convention, and declared on which side the questions were carried: an explanation of that you will see by-and-by, under a separate head. "The office of the council of the ta-

ble, is to keep order in the business of the convention, as particularly specified under the head council. The office of the secretary is, to take charge of all writings and papers belonging to the convention; to issue summonses, write and dispatch letters, &c. &c. according to the orders of the convention, and the request of any committee, during the time of their sitting; and shall have access, on all occasions, to every committee during its sitting." This was made a crime in Skirving, when you see it was the duty of his office to attend as many committees as he could spare time for. "The office of treasurer shall be to receive and pay all monies subject to the regulations to be at any time adopted by the convention or the committee of finance. The office of door-keepers is, to prevent the admission of any persons not members, except by special leave of the council of the table." This was to prevent improper company; I do not mean spies; for, on the contrary, when they were known, they were preferably admitted, though with the contempt they deserved, and which no class in society can deserve more than themselves, unless it be the men who employ them. And now follows the head of committees:—"No committee shall be composed of more than 13, or less than three persons; and the number of each committee shall be decided by a show of hands in the convention. All committees shall be chosen, unless otherwise ordered, at the time of their appointment; and they shall be authorized to invite the assistance of such members of the convention as they may think beneficial to the business entrusted to their charge. All committees shall be elected from the leet of the sections, unless found necessary for some immediate purpose, in which case they shall be appointed by the convention, one by one, by a show of hands; and they shall sit and report progress, day by day, until their business is completed. The first meeting of every committee to be fixed by the convention; every subsequent meeting according to their own adjournment." Now comes the head of council of the table. "There shall be three assistants, elected from a leet given in by the sections, one to be renewed, and the senior to go out of office daily." Those who had the greatest number of votes were elected; and in consequence of that, the convention was likely to be best served, for they neither bought their electors, nor sold them when they had bought them. "The secretary and assistants shall form the council of the table; they shall prepare a state of the business for each day; shall arrange the order in which the different subjects shall be taken into consideration, which arrangement shall be adhered to, unless the convention should alter the same by a vote; they shall permit a member from each section to take copies of all motions, &c. to be submitted to the consideration of the sections, and shall assist all members who request their aid, in the wording of any motion they may wish to lay upon the table." This brings me back again, to a motion that has been introduced against me, as written evidence, and which Wardlaw was called to prove: he said, and it was not less to the disgrace of those who brought him forward, than to the Friends of the People, of whom he was a member, that he came in a state of inebriety: he said he had written out that motion; so he did, and I am not ashamed of acknowledging that motion; it is a motion drawn up, not by me, but by the council of the table, and it is stated in the indictment, "To do this your committee suggests a resolution to the following effect, but which I shall leave to be drawn up by the council of the table." The spirit of the motion was that which the committee, of which I was the reporter, had to report, and which motion was to be drawn up by the council of the table. "The council shall have the power to interrupt any debate, for the purpose of proposing to the convention any other business which they may think more urgent; but the president shall take the sense of the convention by a show of hands, whether the debate shall be interrupted or not." Here you see this is the greater part of their duty, to judge of such motions as were laid before them; if they were nugatory, they were to inform the person who brought them of it; if otherwise, they were to indorse them on the back; they were to hand the motion to the president; he was to read it to the convention, and then the vote of the convention was to determine whether the business was of sufficient consequence to depart from the order of the day.

Then follows an article which gives great umbrage to those who are frightened at every thing that looks like French. It is the head of sections. We had the name of divisions, and of classes; but no name which was agreed to by every body; at last, section was agreed to by a great majority; and we thought no more of the French convention at that time, than we did of our new ally, the grand Turk. To explain to you, then, what is meant by sections, and the cause of adopting that word, which was more from accident than any thing else, it goes on:—"All the members of the convention shall be divided by lot, into sections of 15 persons each." And why divided into sections of 15 persons each? It was not with a view to overturn the government; it was not with a view of being seditious, or riotous, or any thing of the like, but with a view of their meeting, as we had many country delegates who had much leisure on their hands, for the purpose of giving them useful employments. In the morning they used to meet and discuss the news of the day, and little political topics, and thereby came better prepared in the evening; and in the course of one week, we already found a great difference in their political information; they had already learned to connect their ideas, and form

a more accurate judgment of the business they were about. They were also to pick out the men who were most proper for the nomination of president for the next night, or for the committees. These were the felonious and seditious employments of the sections in the morning. "The members, who may not be able to attend at the first division into sections, shall be divided by lot among the sections formed; but if any section shall have two more than its proper number, no new member shall draw for that section until the numbers are again equal. Every section shall be furnished with a complete printed list of the convention, containing the name, surname, and the society which each individual represents." And you see, gentlemen, here is great regularity; and where men use such regularity, they cannot be called a riotous, tumultuous assembly. "The sections shall be renewed on every Monday during the sitting of convention." Now, I maintain, that there is no principle in our British constitution, which prevents mutual communication from one man to another, but will encourage that intercourse; for union alone can make us strong, as has been said, though in a different sense, from the bench. "The sections shall meet every forenoon, at eleven o'clock, each in a separate place; and shall daily choose a chairman for the section, who shall report their leets of election, &c.; and if these reports are not delivered into the council of the table, immediately on the chair being taken, they shall be deemed null. Each section shall daily furnish itself with a note of all the business, and with copies of all motions and reports, to be taken into consideration that evening. The sections shall daily discuss the business of the convention; they shall prepare lists of such persons as they may think most proper for offices, committees, &c.; but the sections cannot finally decide any matter; nor, in their collective capacity, give an opinion, or make a proposal to the convention. No member in the sections shall be allowed to vote by proxy."—We did not, you see, intrench upon the privileges of the House of Lords, where they vote by proxy; and we thought, that as every man was equally interested in the business, that he should attend as often as he could; and, if he did not, it should be his own loss, by losing his vote. "The members of one section shall not be received into any other section, during its sitting; and no person, not a member of the convention, can, on any consideration, be admitted." And I am sure, there is not a man here, who would wish to be intruded upon by strangers, in the social hour, over the bottle, but the servant comes up with his name before he is admitted.

[Here Mr. Margarot drank a glass of wine.]

I beg pardon, gentlemen, for this interruption; I should not have done it, if the example had not been set me; we have no such thing in England, gentlemen, as a jury eating and drinking in court.

Gentlemen, the next head is that of motions. A great degree of criminality has been attached to the motions that have been produced; but, notwithstanding all this written evidence, which is to transport us, and prove us nearly guilty of high treason, I will show you the innocent manner in which these things were to be carried on. "All motions shall be in writing, signed by the mover and seconder, and transmitted to the council of the table, who shall number and file them, according to the order in which they are given in. At the close of each day's business, and before the adjournment of the convention, the secretary, or one of the council, shall read all motions given in, during that sitting, according to the priority of delivery, in order that they may be copied, and taken into consideration, by the several sections; and, being so read, they shall come on for debate the following sitting, in the same order of arrangement made by the council, unless the convention shall think proper to prefer any one of them, as containing matter of great importance, or more urgent necessity. A motion once rejected, cannot be brought forward again in the same session of the convention, unless requested in writing by 20 members." This was thought proper to be introduced, in order to save us trouble, as there were some men who could speak better than they could write; and who, perhaps, might wish to be busy; for we already began to suspect that we had got spies among us, and that motions of a dangerous tendency might be brought in; and, therefore, we endeavoured to prevent being led into a trap; for we found that, in general, it is the most honest men that become the dupes of knaves. "In case of two or more motions being on the table, which relate to the same object, and tend to the same end, the council and the respective movers shall use their best endeavours to consolidate them all into one before they are discussed: but, in case the council and the respective movers cannot agree in such measure, then the same shall be finally determined by the convention. Notwithstanding the above regulations, any member may submit a motion at any time, to the consideration of the convention, which he deems to be of greater importance, or more urgent necessity than any of those which stand in the order of the day; and if from the reasons advanced by such member, a majority of the convention shall coincide in opinion with him, such motion shall be immediately brought forward and determined."

Now, here is that which was drawn up with more care than any other part. We know debates often lead to warmth; and, that when disputants wax warm, they generally grow tumultuous and irregular. We have seen these tumults, and this riotous manner of debating, even in the House of Commons: we sought to avoid it; and there-

fore we ordered that "no person shall speak in the ordinary sittings of the convention, more than once on the same subject, unless it be to explain, or by special leave of the convention; but, when all who wish to speak to the question have done so, any member may be heard again; and every member who opens a debate, shall have the privilege of being heard the last in reply, before the discussion be finally closed. If it shall appear to the mover or seconder of any motion, or to any other member, that the matter contained therein requires the most ample discussion; on motion for that purpose, made and agreed to, the person shall leave the chair, for the purpose of the convention resolving itself into a general committee, in which a chairman being first appointed, every member shall be at liberty to speak as often as the committee may think proper to hear him, till the question shall be called for by an apparent majority. As soon as the question shall be called for, and the discussion closed, the president shall resume his seat, and the question shall be determined in convention. The council shall require the president or chairman, or either of these may, of his own accord, put a vote for closing the debate, when it appears to any of them to be the general wish of the convention, or general committee; there shall, however, be a vote taken; and two to one for closing the discussion, before it actually takes place." Here we sought, not only to avoid the heat of debate, but we sought to avoid partiality, and we sought to avoid any prejudice that any man might have against another, or in favour of another. "The question of closing the debate may, itself, be debated; but it must be strictly attended to, that no member, under pretence of giving reasons for or against closing the debate, shall go into the discussion of the main question."

The next head is that of order; a term not borrowed from France, but from the House of Commons of England; for, in the House of Commons, the order of the day is a common phrase. "The convention shall meet daily, at five o'clock in the afternoon, and shall proceed first, to receive and verify the powers of any new members. Secondly, to receive, without reading, the lists of candidates, from the sections. Thirdly, to read communications addressed to the convention. Fourthly, to elect, from the list of candidates, the committees, if any have been ordered, the new assistant, and the new preses. Fifthly, to hear from the council, what is the whole business standing for discussion; and what is that particularly appointed for the day, with the order of priority, proposed by the council; which priority may there be debated, and fixed. Sixthly, to read over the minutes of the preceding day, and any former days, not finally settled, and direct corrections of the same, if need be. Seventhly, to receive reports from the different committees.

"In going through the business of the day, the order of priority, fixed as above, shall be adhered to, unless altered by a vote of the convention, which must, at any time, be put, if desired, by the council; or, if required in writing, by any five members. Any point, once discussed and determined, can neither be rescinded nor brought forward again on the same day; nor at all, but by a motion regularly made; and for the bringing in of which, leave shall have been obtained the preceding day. The reporter of any committee shall always have a preference to the ordinary business of the day, to deliver his report to the convention, so as not to break in upon any debate which may be before it. Members shall speak in the order in which they rise for that purpose; and, if more than one rise at the same time, the preses shall decide who is entitled to priority.

"The president alone shall have the power of interrupting any speaker who wanders from the question; but any individual shall have the right to suggest his opinion, by writing the word 'order,' and handing it to him.

"No member to be allowed to speak to any subject after a show of hands has taken place on it."

You will see by this, that we were not only far from seditiously inclined, but we did not give our tongues a loose: we were obliged to speak in order, and methodically take our turns, and say nothing farther than what we were entitled to. You will from that gather, that a society so well regulated, could not be for the purpose of overturning the constitution, which, in its original state, is regularity itself: we were proceeding in a way that directly led to a reform. These are the heads; and there remained five more to be finished, when we were apprehended by general warrants, and the meeting dispersed by the power of the sheriff, and of the lord provost; therefore, if we are not in order, it is not our fault, but the fault of those who interrupted us; yet, you will see, that we were not altogether so illiterate as some men, and men of shining, perhaps more shining than solid, abilities have thought proper to represent us. We knew what we were about; and all this was done openly; we have had fifty visitors of a night; any person sending in his name to the council of the table, was his admission ticket; and, as I before observed to you, we sought nothing but the public good; we sought a parliamentary reform; we seek it still; and, I trust, we shall to the end of our lives; and a renovation—not a destruction, but a renovation—of our constitution.

Gentlemen, I will now come to the plain facts stated in the indictment, and then I will make a few remarks upon the evidence that has been given; and, gentlemen, I am sorry to detain you so long; but it is my duty to be as explicit as possible, in this

matter, as well as your's to listen to it; were it my own individual business, I would meet your verdict this instant; but I have already told you, that I consider myself as the least concerned in this matter; it is the cause of reform.

The indictment, gentlemen, accuses me of having been made a delegate by an association of seditious people, calling themselves the Corresponding Society of London.

Now, gentlemen, either the charge is true or false; if it is false, it is malicious; if it is true, then I am the seditious person I am represented. The London Corresponding Society is not a seditious society; it is a society established upon as regular and as systematical a plan as that of the convention. We are proceeding to increase, to diffuse political knowledge, to make every man acquainted with his political rights: we are formed into divisions, because we well know, that large companies introduce disorder and confusion; therefore, we never suffer,—except when general meetings take place—we never suffer above a certain number to assemble together; we assemble in private houses; neither eat nor drink; but calmly and coolly discuss the political subjects before us; we instruct the ignorant, and receive instruction from those that know more than we do; and therefore the charge that this is an association of seditious people, is a falsehood. And the public prosecutor backed it with another falsehood, on the night he did me the honour to try me, instead of Mr. Skirving; he asserted, that this seditious society had held a meeting for the purpose of choosing delegates; and, that they were so detested by the mob, that the magistrates were obliged to protect them. I was not at liberty to answer him that night; nor should I do it now, especially in his absence, but that impressions unfavourable may have gone forth. It is said, that the magistrates—an odd doctrine for a crown lawyer to advance,—were obliged to take under their protection the seditious London Society, in electing delegates to send to Edinburgh. If the Corresponding Society was seditious, why did not the magistrates quell us; they were present; and they came with a design to disperse us; but the laws are paid greater regard to in the metropolis than they are at some distance from it; and, when they found we were acting upon constitutional principles, they dared not molest us; there were 500 constables, and out of those 500, I will, to be sure, say there were at least 300 out of them who maintained the same principles that we did, that a reform was necessary; that it might have been imprudent if the magistrates had acted otherwise than they did. If any illegal open act of violence had taken place, it must have been occasioned by them; but they did not commit any act of violence; on the contrary, we placed ourselves under the care of the high constable and his possy; and they attended; but, as in the testimony of the lord provost, if any riot was occasioned that day, it was from the magistrates and their attendants; for our society, being so numerous, we were obliged to meet in an open field; or at least a field inclosed with palings; it was in the neighbourhood of Spitalfields; and the people in the neighbourhood, led by curiosity, and not kept at home by work, being out of employ, and might as well dine upon the fresh air as upon the stagnate air of Spitalfields itself, they attended our meeting to the amount of thousands, and behaved as orderly as those men you saw to-day come up the streets; they behaved with the utmost decency; and the police magistrates, from the police office, with their police runners, attended, but did not dare to molest us more than that we invited them to attend our meeting, inasmuch as it was constitutional. Knowing that they should displease certain persons in power, who shall be nameless, they declined accepting the invitation of attending; but, after I was nominated, I returned thanks for the polite attention they had paid us; they asked us whether we were to choose members of parliament; I replied, No; that our object at Edinburgh was to communicate with our brethren here, who were, like ourselves, pursuing a reform in parliament; that would be our business in Edinburgh. I told them, if they had any commands, I would execute them; they politely bid me a good day, and drew off their constables; and found themselves to be very happy in being protected by us; it is true, sir, the high constable came to me, and begged of me, as a means of dispersing the mob, that I would desire the members of our society to disperse quietly, forasmuch as there might be some riot, some tumult. I told him, if that was the case, we would to a man turn out and assist the civil officer; that as reform was our aim, so was order; and that we would, on every occasion, protect the civil officer; and at the same time that we assisted him in his duty, we would take care that he did it.

And, gentlemen, my behaviour has been perfectly regular; I have been always ready to come forward, and face my country, against any charges, except, at the first instance, when I was assailed by six blackguards, or messengers; or, whatever they were, I told them, take my word, that whenever they required my presence, I would be forthcoming; the same was the case in this court; I had not renewed my bail in this court; yet, I did not hesitate to appear; I never will fly from justice; I will always abide by it. Besides, gentlemen, if the London Society was seditious, but it is not, it is sanctioned by a letter, a copy of which shall be given to each of you, to peruse at your leisure: you will see, that it was a society founded upon our constitutional principles; that none of the ministers dared offend us: it is true, last year, several

associations were formed all over the kingdom; and, it is they who sounded the tocsin; and, where did they originate? they originated in about eleven placemen: the president, the chairman of that society, possesses only five places; he was a clerk, or understrapper of lord Hawkesbury; his name is Reeves: at the same time, to prove to you the farther constitutionality of our proceedings, we did, in the month of April, hold an assembly, at the Crown and Anchor, in the room above this very man, who was for protecting property against republicans and levellers: this very man, obliged to bite his nails, in the room underneath, dared not show his teeth; but he can write; and he is assisted—I will not say by the treasury, but he has pecuniary assistance, and has laid the public under contributions; and, here I apply to an observation of the public prosecutor, that we drew money from the poor, the deluded, and the weak. Would to God, no man drew more from the poor, the deluded, and the weak! If no man enjoyed more sinecure places than we do, every family would have bread; which is not now the case; while those who draw money from the poor, the weak, the deluded, and, I may add, the oppressed, are revelling in riot and luxury, and all manner of profligacy: while they sell themselves, while they sell others, and their crimes, they cut a figure; but let them remember, that every guinea that they possess, consists of a certain number of drops of the blood of the poor. He says, being named a delegate by an association of seditious people, calling themselves the corresponding society of London, did repair to Edinburgh, with the wicked and felonious purpose of joining and co-operating with an illegal association of evil-disposed and seditious persons, who originally designed themselves the general convention of the Friends of the People. Now, it seems, that the original Friends of the People, were an illegal association,—were an association of evil-disposed and seditious persons. In the indictment, it says so; but, in the pleading of the prosecutor for the crown, he says otherwise; he says, that they were harmless, that they were allowed; and indeed, the behaviour of the magistrates toward them, seems to prove the legality of their institution: he goes on, and charges us with holding various illegal and seditious meetings; how came they to be illegal? if the Friends of the People, were in the first instance, legal, how came they to be illegal and seditious? or where are the proofs that he brings of it? He likewise says, they met under the pretence of procuring a reform. Gentlemen, you are not to be caught by words: you are men of sense; and sense alone is to operate upon you; reason and sound sense: how is he to tell? how is he to prove? in what manner has he proved that these were only pretences? On the contrary, what I have already showed you betrays a great system of regularity and order; and order will never be introduced for the sake of forwarding confusion; and yet, he says, they were evidently of a dangerous and destructive tendency,—though I startle at the words, evidently of a dangerous and destructive tendency; yet, if you allow me to add a few words to that sentence, I will show they are strictly true; for, if you apply these words to the abuses which have crept into the constitution, you will make English, you will make sense, and you will make truth of it. He says, we imitated, in the form and tenour of our proceedings, that convention of people, the avowed enemies of this country; these people, the avowed enemies of this country, fight with guns, bayonets, and cannon: we do the same; and yet I do not suppose that we are guilty for opposing arm to arm: the House of Commons, whom we are seeking to reform and wish to new-model, if possible, upon the plan of a more frequent renovation, uses the same regulations that we do; but order can never be criminal. Gentlemen of the jury, he says, likewise, that I did act as preses or chairman of their meetings: this, likewise, he has failed to prove: he has proved that I acted once as chairman, and, therefore, cannot be guilty of acting as chairman at their meetings; at least, he is inaccurate in his language; but, in England, such an inaccuracy would be fatal to the indictment. Although it has been said that I was an attorney by one, and, by another, that I know nothing of law, I hope to prove, that I know something of the constitution, and, that if I am no attorney, I have as much honesty as any attorney, or any gentleman of the gown. It goes on, that various inflammatory votes and resolutions were passed. Of this, I trust, the public prosecutor has failed to produce any evidence: there is no vote, no resolution of an inflammatory nature; inasmuch as to understand the word inflammatory, it means, not merely, that which will inflame itself, but that which will inflame others; now, the word introduced, as inflammatory, had no manner of connexion with the convention at large, and was ordered by it, to have been burnt: there, indeed, he is right; it might have been inflammatory; when burning, it was inflammatory; but that inflammatory nature was no way seditious. Continuing, then, in the swollen and delusive language of the indictment, he states, that the said Maurice Margarot, did also "when attending in his capacity of delegate, at the illegal meetings of the said association, utter, and make various, seditious, and inflammatory speeches, tending to vilify our present happy constitution, and to withdraw therefrom the confidence and attachment of our subjects." I have already proved, that the only end of our meeting was, to revert to our constitution; but, it seems, that there is a terrible confusion of ideas. He accuses me with having, while attending my duty, as delegate in these meetings of the convention,

with having made several inflammatory speeches, tending to vilify our present happy constitution; and to withdraw therefrom the confidence and attachment of our subjects. That that is a wrong statement, will be evident, at first sight: by what you have already been told, you must have discovered, that men, seeking a reform, cannot wish to do injury to that very constitution which will procure to them that reform; for, we are not so blind as not to see, that our original constitution, if we revert to its original principles, does give us the reform we want; but his way of proving this inflammatory speech is very curious. And, particularly, the said "Maurice Margarot did, at a meeting of said convention, held on Tuesday, 19th November last, 1793, or on some other day of that month, in a mason lodge, or room in Blackfriars Wynd, in the city of Edinburgh, wickedly and feloniously make the following motion, or one of a similar import." This, you will recollect, is to be the vilifying of our present happy constitution, and our withdrawing therefrom the attachment of our subjects. Now, you will see what that motion is, which he adduces in support of that proof: That, previous to publishing an address to the public, a committee be forthwith appointed to consider the means, and draw up the outlines of a plan of general union and corporation between the two nations, in their constitutional pursuit of a thorough parliamentary reform. He brings you forth a motion, as written evidence; and, he tells you, this is done for the purpose of subverting our present happy constitution, and withdrawing therefrom the attachment of our subjects. You certainly will not take it amiss, if I recall to your mind what I said before, that it was an attempt to impose upon your understandings; for there is not one of you fifteen that has a servant about your house, so imbecile as to suppose that a plan of union would tend to vilify our present happy constitution, and withdraw therefrom the confidence and attachment of our subjects. It might, very well, when helped forward with all the brilliancy of gesture, of language, of action, which he is possessed of; but, when you come to look into it, it is a direct falsehood: let us call things by their proper name; it is a direct falsehood; it does not support itself then farther, that motion having passed unanimously; and which motion clearly demonstrated a wish and intention on the part of the said Maurice Margarot, of propagating the seditious tenets of that association over the whole kingdom; and, of exciting our subjects in England, in contempt of legal authority, to adopt the same unconstitutional conduct which the said Maurice Margarot, and his associates, had presumed to follow.

Gentlemen, I have been told, that in Scotland, I am as much a stranger as if I had come from Germany, from Italy, from America; and yet, a court which cannot bring witnesses from England, can try me for what was charged to be done in England: in short, it is a farrago of nonsense. Were I better acquainted with the public prosecutor, I should have thought he meant to have set forth my poor services in the convention; and, therefore, brought me forward to explain the nature of it. The contempt of legal authority! —Where has it been shown? No where: on the contrary, we had the sanction of legal authority; Pitt and Dundas both knew we were coming down: the magistrates of Edinburgh knew we were assembling for that purpose; unless the contempt was, that we did not go and ask them leave: perhaps, had we been strolling players, we might; for, I am told, that a town-hall, not far from Edinburgh, was refused to the Friends of the People; and, the next night, permitted to a company of strolling players: probably the strolling players are the most beneficial members of society.

Gentlemen, you see what hardships I labour under, not being able to get at my exculpating witnesses and papers, the witnesses being above the laws of the country. The lord advocate, when he says it was in contempt of legal authority, utters a falsehood: not even your lord chief justice Laing, who goes about knocking people down in the street,—his legal authority had not shown itself; and, therefore, it was not in contempt of any legal authority whatever. We took our own room; burnt our own candles; and nobody had any thing to do with it but ourselves: there was no contempt of any legal authority; and, therefore, that part must be expunged? as also, that which relates to England; over which, you say, you have no jurisdiction. Again, I find among my high crimes and misdemeanors, the word *tocsin*; and, a learned judge has said, that we took it from the French: another person has said, taking up, I suppose, what had dropped from the learned judge, that it was a French word: unfortunately, it happens to be borrowed even by them: it is a Chinese word, signifying a shrill sound; a bell that is rung when danger is near; and, you know, the greater part, or all the words of the Chinese language, mean one and the same thing; and, therefore, they are obliged to couple a number of them, in order to convey what they mean, especially when it carries a complicated idea with it.

Again, a motion is deemed very seditious, for having appointed a committee for the particular purpose of watching every act which may militate against the rights of the people; it is first false, that such a committee has been appointed; but, if it had been appointed, we should, in the French term, have deserved well of our country, for our vigilance; for let me call to your mind, in all the high offices of trust, you find very few people willing to step forward, and serve you for nothing; and that would have been the case, if we had appointed this committee: we should have been la-

bouring for you, at our own expense; being your centinels, watching, that none of your rights might be encroached on while you slept. But it may be proper here to animadvert likewise upon the blank that was produced as criminal, and more criminal than the written evidence: it was said, that the resolution which ought to fill the blank, was of such a nature, that it must not appear till the end of the resolutions. I will explain that to the satisfaction of the jury; but it must be by reading to them the whole discourse. Here is a motion, supposed to be made by Mr. Callender:—That in case the minister, or any other member, bring into the House of Commons a motion for a convention bill, as passed in Ireland, for preventing the people from meeting, according to their just rights, by the Revolution, the same motion shall be noticed to the delegates of the respective societies immediately, to meet in convention, to assert their rights; and then they make me say "this is an excellent motion; and the event which it alludes to, ought to be the tocsin to the Friends of Liberty to assemble: it seems, however, to be imperfect; it does not mention any place of meeting; neither does it specify the time when the delegates are to assemble; for the word immediately is indefinite, and will not convey the same meaning to persons residing in different parts of the country: by those who live near to the place of meeting, it will be understood, that they are to repair there next day; by those at a greater distance, within a few days; and by those still farther of, within a week after such information is received." Gentlemen, you will remember, I have read to you eight chapters, the produce of the committee of regulations; you will see what spirit actuated them, when they drew up those regulations; and that there was nothing seditious in their tendency. Here, I am then made to say, that, "this motion comes properly under the chapter of regulations: I wish it were referred to that committee; I therefore move, that the report be read, that the convention may judge, whether the article I allude to sufficiently provides for the intention of the motion now before the convention." Here you see, first, my dissent to that motion of Mr. Callender's: the one which the committee of regulations had drawn up, was in a different style, and would have come in extremely well at the end of the regulations; instead of which, the convention spliced the one with the other; they adopted the motion of Mr. Callender, and proposed to bring it in as amended by Mr. Sinclair, and others; and, the next day, they proposed to bring it in at the end of the proceedings. That is the only mystery that has given so much uneasiness to the public accuser; while, at the same time, he might have done away a great deal of your suspense, and, likewise, have made himself much easier; for I believe he is in possession of that very motion, but did not think proper to produce it, because it would not have answered his end of criminating me. However, I will invalidate it entirely, for the public accuser is bound to bring forward the best evidence he can adduce: he has not brought that evidence forward: he has told you, that he has got it, but has not produced it; therefore, you are not to believe him on his word; and, I believe, that is not the only falsehood pointed out, that will engage you to disbelieve any thing he may assert. I will read a passage from the Gazetteer, which will show, that other men have been the victims of his falsehood, as well as myself. Gazetteer, 7th January, signed by a man of great respectability, both as to truth and fortune; a man still more respectable by education, and by his virtue; he is a man possessed of 6,000*l.* a-year, and upwards; lays the chief part of that money out, not in luxury, or in profligate living, but in relieving the necessities of the poor; I mean Mr. Archibald Hamilton Rowan,* who has been called one of the wretches of Ireland.

"The lord advocate of Scotland, Robert Dundas, having asserted, on the trial of Thomas Muir, esq., that an address from the United Irishmen of Dublin, to the delegates for reform in Scotland, to which my name was fixed as secretary, 'was penned by these infamous wretches, who, like himself, have fled from the punishment that awaited him.'† and an explanation having been

* See his trial for a seditious libel, Vol. 22, p. 1033, of this Collection.

† In none of the editions of Muir's trial, is the expression to be found, which is cited as having been uttered by the lord advocate in his address to the jury on that occasion; and as reports of the trial were published by the partisans of Muir, as well as his opponents, it seems probable that the offensive expression was an interpolation. In the correspondence which took place on the subject, and which I have seen, Mr. Rowan stated that the words were attributed to the lord advocate in the account of his speech published in the Edinburgh Gazetteer; it is therefore possible, that in the warmth of extempore argument, the words may have been used; and if so, I believe they must have had reference to the celebrated Mr. Napper Tandy. For the purpose of obtaining an explanation from the lord advocate, Mr. Hamilton Rowan, attended by the hon. Simon Butler, proceeded from Dublin to Edinburgh; immediately after their arrival, however, Mr. Rowan was taken into custody; and as the proceedings against him are intimately connected with these cases I subjoin an account of them, which was printed at the time.

"*Edinburgh, 28th October*, 1793.

"Unto the honourable Sheriff of Edinburgh —The petition of William Scot, procurator fiscal of court, for the public interest,

avoided, under the pretext of official duty, I find it now necessary to declare, that such assertion of the lord advocate is a falsehood."

"ARCHIBALD HAMILTON ROWAN.

"*Dominic-street, Dublin, Dec.* 17, 1793."

This is what they call in plain vulgar English, giving a man the lye; and when the name is affixed to it, this man is of an equally high character, and his intrinsic character makes him rank at least with the official cha-

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"Humbly sheweth; That in the months of November and December last, or thereby, a most dangerous spirit of sedition made its appearance amongst many of the leidges in this country, which was carried to a very great height; and meetings promoted and called at many different places for the avowed purpose of creating disturbances, and overturning the happy constitution of this country——In particular the promoters of these meetings and seditious purposes, procured and brought about what they were pleased to term a convention of the Friends of the People at Edinburgh, some time in the beginning of December last, which sat and deliberated upon their seditious purposes for several days, during which period, or recently prior thereto, Mr. Archibald Hamilton Rowan, of the kingdom of Ireland, designing himself secretary to the society of United Irishmen in Dublin, did, with a malevolent and wicked intention, and with a view to promote and forward the aforesaid seditious purposes, transmit, or cause to be transmitted, to one or more of the members of the said meeting, at Edinburgh, calling or styling themselves, the convention of the Friends of the People, a printed paper of a most dangerous and seditious tendency, intituled, 'Address from the society of 'United Irishmen in Dublin, to the dele-'gates for promoting a reform in Scotland;' which paper, and the dangerous sentiments therein contained, were recommended by him to that meeting, and they urged in consequence thereof to adopt the same.——That in the course of the months of June, July, or August last, the said Archibald Hamilton Rowan, with the same wicked and malicious intent, also sent more of these printed papers, with other papers or pamphlets, of a seditious and dangerous tendency to the constitution of these kingdoms to Scotland, to be dispersed and circulated there. And not satisfied with this, he, with the same malicious and wicked intent, and for other seditious and dangerous purposes, is just now come to this country, and is* within your lordship's jurisdiction.—In order, therefore, to check such illegal and unwarrantable proceedings, and prevent the fatal consequences which might ensue therefrom; as also, that the said Archibald Hamilton Rowan may be punished according to law if guilty; your lordship's warrant to the effect after mentioned is craved.

"May it therefore please your lordship to grant warrant to officers of court, and other executors of the law, to search for and apprehend the person of the said Archibald Hamilton Rowan, wherever he can be found within this shire, and to bring him before you for examination —and thereafter, if you see cause, to commit him prisoner to the Tolbooth of Edinburgh, or Canongate, therein to remain until liberate in due course of law according to justice.

(Signed) WILLIAM SCOT, P. F.

"*Edinburgh, 28th October,* 1793.

"The sheriff having considered this petition, grants warrant to officers of court to apprehend and bring before him the person of the within-designed Archibald Hamilton Rowan, for examination.

(Signed) JOHN PRINGLE.

"*4th November.*

"The which day, compeared in presence of John Pringle, esq. advocate, his majesty's sheriff depute of the shire of Edinburgh, Archibald Hamilton Rowan, esq. of Rathcoffy, in the county of Kildare, Ireland, who being examined* and interrogated, whether or not the declarant is acquainted with Mr. Thomas Muir, younger, of Hunter's-hill, presently prisoner in the Tolbooth of Edinburgh, declares, that had the declarant been in his own country when he was apprehended, he would have requested to see the warrant, but thinking the first duty of a good citizen, to be submission to authority, and appeal to the law for redress, he has attended: but being ignorant of the laws of this country, and not knowing how far he may criminate himself, and thinking the interrogatory unconstitutional in itself, he begs leave to decline answering.——Interrogated, did the declarant

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* It is observable, that though this petition and warrant granted thereon, which bears date the 28th of October, 1793, states Mr. Hamilton Rowan to be then within the jurisdiction of the sheriff of Edinburgh; yet Mr. Hamilton Rowan did not leave Dublin until the evening of the 31st of the said month,—arrived in Edinburgh at one o'clock of the 4th November, 1793; and in less than one hour afterwards he was taken into custody.—*Orig. Ed.*

* This examination was carried on in secret; the sheriff depute, the sheriff's substitute, two clerks, the procurator fiscal, the messenger, and Mr. Hamilton Rowan, were the only persons present.—Mr. Hamilton Rowan requested that Mr. Butler should be admitted, but his request was refused, it being contrary to the custom and laws of Scotland, to admit at such examination the presence of any person on behalf of the party under examination.—*Orig. Ed.*

racter of the public prosecutor. I dare say he is not a man, who would fix his name to a falsehood; and if he had, his falsehood would have been contradicted; and it seems that here the public prosecutor is very full of spirit, and therefore would have resented this injury. He has silently acknowledged the truth of it, and the man who will tell a falsehood in one instance, will tell it in general; therefore be wary how you trust merely to

in the months of November, December, or January last, transmit, or cause to be transmitted, to the said Thomas Muir, or any other person in Scotland, a printed paper, dated November 23rd, 1792, intituled, 'Address from the society of United Irishmen 'in Dublin, to the delegates for promoting a 'reform in Scotland, William Drennan, 'chairman, Archibald Hamilton Rowan, se-'cretary;' declares, that for the reasons above-mentioned, and because the declarant sees that the accusations against him, are the having transmitted such an address, he declines answering.——Interrogated—Did the declarant write a letter to the said Mr. Muir, or any other person, desiring him to lay the foresaid address before the meeting of delegates for promoting a reform in Scotland, designing themselves the convention of the Friends of the People in Scotland? Declares and declines answering for the reasons already assigned.——Interrogated. — Did the declarant see the foresaid Mr. Muir in Ireland, in the months of June, July, or August last, and then give Mr. Muir a copy or copies of a printed pamphlet, intituled, 'Proceedings of the society of United Irish-'men in Dublin?' Declares that the declarant conceives the whole of this examination, as tending to criminate himself; that he is not conscious of having ever acted unlike a good citizen, either here or in his own country, and appeals to the justice of his cause, when legally and constitutionally brought forward, for his exculpation, declining to answer the question.—— Interrogated. — At what time the declarant arrived in Edinburgh? Declares, that he arrived about one o'clock in the afternoon of this day.——Interrogated. —Has the declarant seen or spoke with the aforesaid Mr. Muir, since the declarant arrived in Edinburgh? Declares, that the messenger who took him into custody, found him in Mr. Muir's room.——Interrogated.— Did the declarant come to Edinburgh at present, as a delegate from Ireland, to attend the convention of the Friends of the People at Edinburgh? Declares, that if he had had the honour of being appointed as a delegate to attend that meeting, he would have taken care to come before it had broke up.——Interrogated.—Did the declarant write a letter to any person in this country, intimating that he meant to attend the aforesaid meeting as a delegate from Ireland, or in any other capacity? Declares that he did not.——Interrogated.—Did the declarant receive an invitation from any person or persons in this country, to attend a meeting, designing themselves a convention of the Friends of the People, and which was held in Edinburgh last week? Declares, *That he did not receive such invitation.*——Interrogated. — Did the declarant receive an invitation to attend any other meeting for reform in Edinburgh, under any other designation than that above-mentioned? Declares, that *he received no invitation to attend any meeting whatever, in Edinburgh.* Declares and acknowledges, that the petition of the procurator fiscal, with the sheriff's warrant upon it, in consequence of which the declarant was apprehended and brought before the sheriff, was read over to the declarant before the examination proceeded. All this he declares to be truth.

(Signed) ARCHIBALD HAMILTON ROWAN.
JOHN PRINGLE.

"The before-designed Archibald Hamilton Rowan, being further examined, and shown a printed pamphlet intituled, 'Proceedings of 'the Society of United Irishmen in Dublin,' and interrogated, whether the declarant has before seen the said pamphlet, or any copy of it? Declares that he knows, that the society of United Irishmen published their proceedings, but does not know whether the copy now shown him, be a copy of their proceedings or not.——Interrogated.—Whether or not the declarant, at any time, acted in the capacity of secretary to any of the meetings of the aforesaid society of United Irishmen? Declares and declines answering this question, for the reasons already assigned. Being interrogated, and desired to consider the pamphlet now shown to him, and to say to the best of his knowledge and belief, whether or not it is the publication made by the abovementioned society, as before declared to? Declares and declines answering the question; and which pamphlet is marked as relative hereto of this date. All this he also declares to be truth.

(Signed) ARCHIBALD HAMILTON ROWAN.
JOHN PRINGLE.

"The before written declaration, consisting of the ten preceding pages, was freely and voluntarily emitted by Mr. Archibald Hamilton Rowan, therein designed, in presence of John Pringle, esq. advocate sheriff depute of the shire of Edinburgh; Harry Davedson, esq. sheriff-substitute, and Mr. William Scot, procurator fiscal of said shire; George Williamson, messenger, in Edinburgh; Joseph Mack, and James Williamson, writers in Edinburgh. The declaration being wrote by the said Joseph Mack.

(Signed) HARRY DAVEDSON.
WILLIAM SCOT.
JOSEPH MACK.
GEO. WILLIAMSON.
JAM. WILLIAMSON.

his assertion, especially with an object like this in view, the extirpation of abuses upon which he and his relatives fatten; for his uncle reaps now upwards of 20,000*l.* a year of the public money as secretary of state. Were abuses to be rectified, these salaries would be diminished; were these abuses to be rectified, it is possible that his conduct would be inquired into as most likely it will speedily. You see by this, gentlemen, that

"*4th November*, 1793.

"The petitioner represents, that as the within designed Archibald Hamilton Rowan, esq. when under examination before your lordship, declined to answer several questions put to him. The petitioner is entitled to have your lordship's warrant against Mr. Rowan, to commit him for further examination. But as the inquiries and further examinations may take up a considerable time, and thereby lay Mr. Rowan under confinement, the petitioner shall consent that he be liberated for the present, upon finding caution to stand tryal, in any criminal complaint to be brought against him, for the crimes charged in the petition, and craves that your lordship will grant warrant accordingly.

(Signed) WILLIAM SCOT.

"*Edinburgh, 4th November*, 1793.

"The sheriff having resumed the consideration of this petition, declaration of the within-designed Archibald Hamilton Rowan, taken before him of this date, with the before-written minute, grants warrant to officers of court, and George Williamson, messenger at arms, to apprehend, and incarcerate, him in the Tolbooths of Edinburgh, or Canongate; the keepers whereof are hereby ordered to receive and detain him, ay and until he find caution acted in the sheriff court books of Edinburgh, to answer to abide tryal, and underlye the law, in any complaint or criminal prosecution to be brought against him, within the space of six months, from the date of such caution, before any court competent upon the subject matter of this petition, and that under the penalty of three thousand marks, Scots money.

(Signed) JOHN PRINGLE.

At Edinburgh, the fourth day of November, seventeen hundred and ninety-three years.

"The which day compeared, colonel Norman Macleod, residing in George's-street, Edinburgh, and judicially enacts, binds, and obliges himself, his heirs, executors, and successors, as cautioners and sovertys, acted in the sheriff court books of Edinburgh, for Archibald Hamilton Rowan, esq., of the kingdom of Ireland, presently in Edinburgh, that he shall present the person of the said Archibald Hamilton Rowan, esq. at any time and place to which he shall be lawfully summoned, within the space of six months, from this date, and at all the after dyets of court, to answer to abide tryal, and underlye the law in any complaint, or criminal prosecution to be brought against him, within the space foresaid, before any court competent, either at the instance of his majesty's advocate, or the procurator fiscal of court, upon the subject matter of the petition and information presented to the sheriff of Edinburgh, whereon the warrant of commitment against him did of this date proceed, and that under the penalty of three thousand marks, Scots money.

(Signed) NORMAN MACLEOD.

At Edinburgh, the fourth day of November, seventeen hundred and ninety-three years.

"What is wrote upon this, and the preceding pages, is a just copy of the proceedings before the sheriff of Edinburgh, respecting Archibald Hamilton Rowan, esq.

JOSEPH MACK.

"The following is the copy of a letter from Archibald Hamilton Rowan, esq. to the sheriff of Edinburgh, dated November 6th, 1793, which is to be held as a part of the declaration.

JOSEPH MACK.

"My lord;—In consequence of your kind permission of this morning, I trouble you with the following explanation: upon reading over the interrogatory, and examining my papers, I find an incorrectness might be applied from two of the answers I gave to you in my examination, which I beg leave to elucidate.

"'Interrogated. — Did the declarant receive an invitation from any person or persons in this country, to attend a meeting, designing themselves a convention of the Friends of the People, and which was held in Edinburgh last week? Declares, that he did not receive such invitation.——Interrogated.—Did the declarant receive an invitation to attend any other meeting for reform in Edinburgh, under any other designation than that above-mentioned? Declares that he received no invitation to attend any meeting whatever in Edinburgh.'

"Now I do find that I did receive a letter in Ireland from an individual, which contained the following paragraph: — 'I could most earnestly wish that you, or any of your friends, would, without delay, do us the honour of a visit.'

"I did not recollect this paragraph when I was brought before you, I hardly think it can be called an invitation, I certainly did not think it such; and I declare upon my honour, that that letter was not the occasion of my coming to Scotland.—I am, my lord, &c.

(Signed) ARCHIBALD HAMILTON ROWAN.

where any thing tending to exculpate me could be adduced, he has kept it back; but he has not done it simply and fairly, but aggravated it;—"I have greater proof of this man's guilt, but I will not produce it; whereas, it is an extenuation of guilt."—Here is another act of criminality in this motion; by-the-by, it seems very inconvenient in the practice of the law of Scotland, that one crime may affect many persons, if it is only by holding finger to finger, art and part as it is called here; and here, gentlemen, it may be as well to revert to the opinion of the solicitor-general of king William upon that subject. Sir John Hawles says, "As juries have ever been vested with such powers by law, so to exclude them from, or disseise them of the same, were utterly to defeat the end of their institution; for then if a person should be indicted for doing any common innocent act, if it be but clothed and disguised in the indictment with the name of treason:"—So that you see, even in king William's time, there were frivolous persecutions as well as at present—I meant to call them prosecutions, I beg pardon,—and that if the jury did not step in between the crown lawyer and the subject, the subject having no redress, was incarcerated, fined, banished, or otherwise ill-used; and all for things, which in themselves were perfectly innocent, but being clothed in tremendous language, appear heinous crimes, such as I was mentioning just now, and is reported here;—"If any person should be indicted for doing any common innocent act, if it be but clothed and disguised in the indictment with the name of treason, or some other high crime, and proved by witnesses to have been done by him, the jury, though satisfied in conscience that the fact is not any such offence as it is called, yet because (according to this fond opinion) they have no power to judge of law, and the fact charged is fully proved, they shall at this rate be bound to find him guilty." Thus you will, if you find me guilty, refer me to the mercy of the Court.—I shall not detain you much longer; you have attended me with singular patience, gentlemen of the jury, and I thank you for it;—you are doing your country good. Distinguish then the true friends of your country from its foes. You have seen that the testimony of every witness adduced on the part of the crown is one weaker than another; that it all turns upon the point of the meeting being seditious; whereas, in verity, as the law term is, the meeting was founded upon the claim of rights—that it is the privilege of the subject to seek redress; and I must take the liberty of quoting to you something from Defoe, which will prove to you, that the people have a right—that the original power rests with them, and that they have a right to control that power, and keep on it a continual check; for, as I said before, the servant is not greater than the master, and the king is but the chief servant of the nation. It is true we do not exercise our authority over him, or if we do, it is but once in two or three centuries; and I hope it will be centuries before we shall have occasion to exercise it again. But there are those who exercise the regal power in his name, and the sooner they are brought to condign punishment, the sooner it will prevent others from pursuing the same dastardly pursuits. This is a chapter of Defoe; he is treating of the original power of the collective body of the people of England.——"To the king.—Sir, it is not the least of the extraordinaries of your majesty's character, that as you are king of your people, so you are the people's king. This title, as it is the most glorious, so it is the most indisputable in the world. God himself appointed, the prophet proclaimed, but the people's assent was the finishing the royal authority of the first king of Israel. Your majesty, among all the blessings of your reign, has restored this as the best of all our enjoyments, the full liberty of our original right in is actings and exercise."

This was published in the year 1705, soon after the Revolution. "Former reigns have invaded it, and the last thought it totally suppressed; but as liberty revived under your majesty's just authority, this was the first flower she brought forth;" that is to say, the acting and exercises of our liberties and original rights, which are those which you have seen in Mr. Wharton's speech, of petitioning and obtaining redress; of keeping a constant check upon every servant of the crown, in whatever situation he may be placed; and of obtaining a fair and equal representation.

He says in another place,—"I have observed, when interest obliges any person or party to defend the cause they have espoused, they please themselves with fancying they conceal their private designs, like a late act of parliament, which in the preamble calls itself

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"N. B. Norman Macleod, esq. who became the bail of Mr. Hamilton Rowan, is member of parliament for Invernesshire; a gentleman of large property and extensive connexions. The circumstances of this business being reported to him, while Mr. Hamilton Rowan was under examination, he attended at the sheriff's court, and although he was an entire stranger to Mr. H. Rowan, yet he insisted in the handsomest manner on becoming bound as his bail."

In justice to the lord advocate, I should mention that in his correspondence with Messrs. Butler and Rowan, he most distinctly stated that the information of their journey to, and arrival at Edinburgh, which led to the above proceedings, came neither directly nor indirectly from him.

With respect to the Edinburgh Gazetteer, see the cases of captain Johnston, p. 43, and Alexander Scott, p. 383 of this volume.

an act for the relief of creditors; but which in its effect, was an act for the relief of debtors." This is like men who cry up the constitution, and live upon its defects. "Thus some gentlemen place fine specious titles on their books; as, *Jura Populi Anglicani*;—A Vindication of the Rights of the Commons of England, and a Vindication of the Rights of the Lords; and with large and high encomiums upon the excellency of our constitution, treat the levity of some people's judgments with fine notions; whereas, the true end and design is defending the interest and party they have espoused."

Gentlemen, call to mind whether it may not be the case with one of us two, the panel or the public prosecutor, whether we may not be trumpeting up or sounding the praise of the constitution, and at the same time have interested and private views; and as it has been said, you cannot penetrate into the minds of men, you can only judge from the tenor of their conduct; hitherto he has acknowledged himself to be a placeman, though not a pensioner. Gentlemen, I take my God to witness, that were I to be offered one of the most profitable places under government, my conscience would not permit me to accept the emoluments of it, when I know that it has been drawn from the blood and the sweat of the poor: that there has been more blood spilt within this last twelvemonth, for the purpose of gratifying ministry, and keeping the public mind from reform, than would completely fill the largest ship that is now in the British navy, and I speak within compass. "The defence of the rights of the representative body of the people, understood by the name of the Commons of England in Parliament, is a great point, and so plain are their rights, that it is no extraordinary task to defend them; but for any man to advance, that they are so august an assembly, that no objection ought to be made to their actions, nor no reflection upon their conduct, though the fact be true; and that it is not to be examined, whether the thing said be true, but what authority the person speaking has to say, it is a doctrine wholly new."

You see, gentlemen, it was a doctrine new a hundred years ago, in the time of Defoe, but is a doctrine renewed now to serve these state prosecutions; it is highly seditious, and of a very evil tendency in the public at present to examine into the conduct of the House of Commons, and yet at that time it was constitutional; why? because we have brought in the present family, and that they had entered into a contract with the people; they would not suffer their servants to deviate from it at first; at present, through lapse of time that is grown obsolete, and their servants' servants tell you, you are not even to examine into it; praise the constitution, and think yourselves happy, whether you are so or not. "It is doctrine wholly new, and seems to me to be a badge of more slavery to our own representatives, than ever the people of England owes them, or than ever they themselves expected. This therefore, together with some invasions of the people's rights, made public by several modern authors;" You see the rights of the people were begun already, then to be invaded, "are the reasons why I have adventured (being wholly disinterested and unconcerned either for persons or parties), to make a short essay at declaring the rights of the people of England, not representatively, but collectively considered. And with due deference to the representative body of the nation, I hope I may say it can be no diminution of their rights, to assert the rights of that body from whom they derived the powers and privileges of their House, and which are the very foundation of their being."

This refers to what I said to you just now, the servant cannot be higher than the master; if they derive their powers from us, we entertain powers superior to theirs; it is therefore our duty to see that they acquit themselves of the task reposed in them, and consequently all the meetings of the people for those purposes are constitutional, and not seditious and inflammatory, as sounded by the public accuser. "For if the original right of the people be overthrown, the power of the representative which is subsequent and subordinate must die of itself, and because I have to do rather with reason and the nature of the thing, than with laws and precedents."—I am happy to find that Defoe stood in the situation I now do. I have, gentlemen, to do before you with reason and the nature of the thing: I have to deal with your reason: I like that much better than law or precedents; reason is an emanation of the divine Being; laws are but the formation of that emanation, and the farther the rays diverge from the centre, the weaker they grow.

Gentlemen, you will find that the plain doctrine that I am laying down, has been the language of all times and all ages, is the doctrine of truth itself; and that I am acting for the public advantage, and not for private or personal emolument; and because I have to do rather with reason and the nature of the thing, than with law and precedents. The crown lawyers can confuse and confound a man not bred to the law: they can confound a juryman with the dust from the old musty law-books, and lull his reasoning to sleep with words conveying a very different meaning to what ought to be attached to them. "To come directly to what I design in the following papers, it is necessary to lay down some maxims other than what a late author has furnished us with; *salus populi suprema lex*." This will not be controverted by any body, the welfare of the people is the first of all laws; and remember this, gentlemen, "all government, and consequently our whole constitution, was originally designed and is maintained for the support of the people's

property, who are the governed." It is for the support of the people, not for the support of the governor, "that all the members of government, whether kings, lords, or commons, if they invert the great design of their institution—the public good, cease to be in the same public capacity."—You see, Defoe absolutely suspends them from their function, the moment they cease to devote their talents to the public good. How many of our placemen and pensioners would be suspended, if that law was still put in execution!—"And power retreats to its original, that no collective or representative body of men whatsoever, in matters of politics any more than religion, are or ever have been infallible." Here is the axe at the root of the omnipotence of parliament,—"That reason is the test and touchstone of laws, and that all law or power that is contradictory to reason, is *ipso facto* void in itself, and ought not to be obeyed. Some other maxims less general, are the consequence of these: as first, that such laws as are agreeable to reason and justice, being once made, are binding both to king, lords, and commons, either separately or conjunctively, till actually repealed in due form." Thus much I differ from many great men in the law at present; who say, that a bad law when once found to be a bad law, ought to be disobeyed in order to get it broken. On the contrary I am for obeying, and every good citizen is for obeying and paying respect to the laws, and to nothing but the laws; and while a law is in force, let it be never so bad, I will obey it; I will point out if I can the errors of the law, but I will obey it while it is in existence; from that confession of faith, you may easily suppose that another article of accusation will fall to the ground, which is that our convention was to assemble and militate against the parliament, in case of the introduction of a convention-bill: we were to overawe—in the language of the public prosecutor—to overawe the parliament; to check them in their proceedings: so we were: but how? by argument, by sound reasoning. As a body of men we could do nothing till we had a majority of the nation on our side. When once the majority of the society is of one way of thinking, it is proper that the minority should yield to it, and that is the first law of society; and as the general good is to be paramount to every thing, so the will of the few is to submit to the will of the many; and therefore, the object of our institution was first to diffuse political knowledge; and secondly, to gather the general will. If we found that general will to be for a reform in parliament, a reform in parliament we should obtain; if we are to be slaves, it is our duty then to sit down silent, and if not satisfied, we may, as a noble lord has said, take our pack on our back, and be trudging.

My lord, at another season I might not talk improfitably; but at the present late hour of the night I think in my mind that I have said sufficiently to acquit myself of all the charges laid against me, if you will be kind enough to divest yourselves of any prejudice which public papers, public rumours, or public prejudices, may have inspired against me to examine not merely the man, I am, myself a willing and a devoted victim to my country. I know if I am left to the mercy of the Court, how that mercy will display itself; but if it can profit the cause that I should be a victim, I am willing it should be so: I have faced death before now: I am not afraid of it now, you may see that I am not agitated: I am as cool as yourselves: I have studied this affair well: I undertook it not sanctioned by a Pitt, a Richmond, or a Dundas; I adopted it upon reason and justice, and I will quit it only with life.

Gentlemen, you represent your country; your situation is awful; you are now to guard its liberties; you are now to encourage the plant of reform;—a mild and peaceful reform, according to the temper of men's minds, now may be easily effected; but beware of persecution carried on with too much rigour. We know, and history shows us, that at a certain pitch of oppression, the people will bear it no longer, and an uninformed multitude is what every well-studied government, every well conducted government should fear to incense. It has been the policy of Europe; and it is a popish policy; and I am sorry to say, we now number two among our allies, who make much use of that policy;—I mean those who encourage the inquisition and the bow-string, the Pope, and the Turk, who both have now ambassadors at our court. It is their policy that the people should be ignorant; it has been the policy of the priesthood; it has been the policy of false politicians; but I hope the time is coming, when men will open their eyes to their true interest, and that season when riches are no longer to be poured upon one man without measure, while a thousand others are starving. It is necessary that there should be a distinction of ranks, and it will take place, but let merit be the way to public offices; study that, and you will find yourselves better served;—not as the present custom is, the cousin of one lord, and the son of another is to be the proprietor of a borough; these are things much wanted to be reformed.

Gentlemen, you have seen how slight the charges against me are; you have had intimations of what the mercy will be that I shall experience; a farther intimation that orders have been issued, though the parts from whence those orders came, have not been developed to you; yet let me recur to your claim of rights; it is contrary to the laws of Scotland, that any magistrate of Scotland should act according to any order whatever, except it is according to the laws of Scotland, but not according to the orders of any stranger. You are in this case, without any appeal in Scotland. You are the representatives of the people; they have entrusted you with their

rights and privileges; you are to pronounce on me, whether I am guilty or not. I have appeared here to answer to my country. I hope I have done it to the satisfaction of my country, and I hope you will do it honour by your verdict. Though the sophistry of the public prosecutor has appeared in all its defects, I hope that sound sense and reason are at work in your minds, and I hope there is not one among you fifteen, but who is possessed of an honest heart. Consider, I tell you, consider not me—consider your country. Consider the cause, and consider the futility of the charge that is brought against me. I am sorry to have detained you so long, but it is a serious affair, and your verdict will not be confined within these walls; the eyes of Britain are now upon you fifteen men, whom I do not even know by name, and who perhaps never saw me before, nor I you; then examine me well, see if there is any thing seditious in my appearance or behaviour; see if there is any thing illegal in what I have done, though not versed in the quirks of the law; and I am glad of it, for I believe the laws, and the perversion of the laws by the practice, have made many an honest man a knave. You will see whether I am guilty of the charge laid against me; what proportion of guilt is attached to me; whether any part is proved home to me; whether any part is legal proof, and whether I was not serving my country; and I cannot hesitate a moment to think, but that your verdict will do honour to your country, and justice to me.—Gentlemen, I take my leave of you.

Give me leave now to call to your lordships attention, your particular duty.——

Lord Justice Clerk.—I will not receive any instructions from you, sir.

Mr. *Margarot.*—I shall take the liberty of checking your lordships, if you do not go on properly.

Lord Justice Clerk.—You have gone on for four hours, and I would not allow you to be interrupted; if you had not been a stranger, I would not have heard one-third of what you have said in four hours, which was all sedition from beginning to end.

SUMMING UP.

Lord Justice Clerk.—Gentlemen of the Jury;—I dare say every man in court is fatigued, as I own I am; and after hearing it will not be necessary to detain you much longer; but I shall make a few general observations, which I apprehend may be of some use in forming a judgment upon this case. The crime here charged is the crime of sedition; and although it is not founded upon any statute law, it is a crime very well known in the common law of Scotland, and indeed is coeval with the very justice of society. When mankind are in a state of nature, every man is a law to himself? but as soon as society is formed, every member of that society lie under obligations to one another; to that society of which they are members, to maintain the law and constitution of that society; and every attempt to encroach upon the constitution of that society, is a very heinous crime, and very severely punishable. Gentlemen, it is a crime which affords different degrees of aggravation; according to the nature of it, it may be applied to private matters, and may be less criminal in that case, according to the circumstances. But whenever sedition has a tendency to overturn the established constitution of the kingdom, it becomes a crime of the most heinous nature, and of the most dangerous tendency, and it borders indeed upon the crime of high treason. Gentlemen, the libel here lays the crime charged in the major proposition, as sedition; and the public prosecutor has stated a variety of facts and circumstances, from which he infers the crime of sedition, and the conclusion of the libel is, that all or a part thereof being proven, then he is to be punished with the pains of law; which pains of law in this case, is an arbitrary punishment, and which the Court will make more or less, according as they think the circumstances of the case deserve it.

Gentlemen, although the prosecutor has detailed a variety of facts and circumstances, all of which I shall shortly state to you, yet it is not necessary that every fact and circumstance should be proved, in order to obtain a verdict of guilty; because, if you are of opinion that such facts and circumstances are proved, as are sufficient to establish against the panel an accusation of the crime of sedition, it founds you in a verdict of guilty. If upon examination of the whole circumstances of the case, you should be of opinion, that nothing is proved sufficient to establish the crime of sedition against him, you will find him not guilty, or the libel not proven. And gentlemen, the first thing to be attended to is this, whether the society which call themselves the British Convention of Delegates, from what you see of them, can be reckoned a seditious society or not;—that is the first thing you will investigate. And gentlemen, it is a very material circumstance, which you will have under your observation in forming your judgment; and, it is this, that that society stands upon the record of this court not of above six or seven days old, to be a seditious society; when a person, a secretary to that society, acting in that capacity, and as a member of that society, was found guilty of the crime of sedition, and has been by a judgment of this Court condemned to transportation for fourteen years; that is a pretty strong circumstance to show that this was not an innocent meeting. If it was a lawful meeting, I am afraid that poor man, Skirving, has suffered very unjustly. In the first place, there was a unanimous verdict of a most respectable jury against him. And in the second place, the Court pronounced judgment upon that verdict. And indeed, gentlemen, independent of what was established upon the trial of Skir-

ving, I think you will be to consider, whether upon taking a full complex view of the proceedings of the society, as it has been established this day by parole evidence, but chiefly by written evidence, which is not so capable of error as the other;—I say, whether upon the whole of the evidence arising from what has been laid before you, that this was not an innocent meeting, but a meeting of a most seditious nature.

Gentlemen, they say that the meeting was for a lawful purpose, and that at the same time that they complain of the grievances that the subjects labour under, nothing more was meant than to obtain a reform in parliament. Gentlemen, that is the profession of the meeting; but then they are obliged to say that because their attempting a reform in another mode, was a much more criminal act if they did not prevail; but you will attend to the facts, and see how far what is proved in this case is inconsistent with the idea of a reform in parliament; and when you see them holding out that the parliament is guilty of the grossest irregularities, as having no regard to the laws or the good of the subject, and in short, that we are just upon the brink of ruin.—When that is the light in which they pretend to hold forth the parliament, it is impossible to believe but they must mean something else than a reform in parliament; they could not well expect to get a redress of their grievances from a parliament whom they have thought proper to state in such terms.

Gentlemen, if a society of so many people, dividing themselves into sections, committees, coming from the sections, motions made, and upon this a committee of secrecy appointed, and a convention of emergency established, and the sittings declared permanent, and all that.—Was this necessary for a reform in parliament? I think there could be no occasion for all this secresy; an application to parliament seems inconsistent with the idea of it. I am afraid it must satisfy you;—you will consider the whole of it, whether the evidence does not show you, that something else than a reform in parliament was intended. You see, that they have established a convention of emergency, in the case of a convention bill being brought into parliament similar to that brought into the parliament in Ireland. Another was in the case of that meeting being dispersed; and the third was in the case of an invasion, or in case of the landing of foreign troops. Now supposing that they had nothing but fair and honest intentions in the case of a foreign invasion, they were to join the government to repel that foreign force, was there any thing there that was an object of secrecy? I think the more public their resolutions were, when of so virtuous a nature, calculated so much for the good of the public, the more public they were, so much the better; and it could not be a subject of secrecy.

That therefore taking all these circumstances together, I am afraid that there is nothing but what is irreconcileable with innocence. But gentlemen, in order to constitute the crime of sedition, it is not necessary that the meeting should have had in view to overturn the constitution by mobs and by violence to overturn the king and parliament. For I apprehend, in some sense, the crime of sedition consists in poisoning the minds of the lieges, which may naturally in the end have a tendency to promote violence against the state; and endeavouring to create a dissatisfaction in the country, which nobody can tell where it will end, it will very naturally end in overt rebellion; and if it has that tendency, though not in the view of the parties at the time, yet if they have been guilty of poisoning the minds of the lieges, I apprehend that that will constitute the crime of sedition to all intents and purposes. Now, gentlemen, take a view of the conduct of this meeting, and attend to the time when all this reform, and all this noise and declamation is made against the constitution. It is at a time when we are at war with a great nation, a cruel ferocious nation, that requires all our strength, and not only our strength, but the strength of all our allies to get the better of them; and the greatest unanimity is necessary. I submit to you whether a man that wishes well to his country, would come forward and insist upon a reform, parliamentary or not parliamentary, at such a crisis; which would create discontent in the minds of the people, when every good subject would promote unanimity among the lieges to meet the common enemy. I say in place of that, to bring forward a great reform in parliament is a thing totally inconsistent with the constitution of this country. I say, bringing it forward at that period is a strong proof that they were not well-wishers to the constitution, but enemies to it. I say that no good member of society would have taken those measures. I appeal to you all, that you are living under a happy government in peace and plenty, in perfect security of your lives and property, the happiest nation upon the face of the earth; and when that is the situation of this country, I appeal to you whether I have not given a fair and just description of it; for a set of men in that situation to raise a faction in the minds of the lower order of the people, and create disaffection to the government, and consequently make a division in that country;—I say, these things appear to be from the very conjuncture at which they are brought forward, sedition of a very high nature. Now, gentlemen, you will take into consideration the whole proceedings of this meeting, and take a view of what stands upon the records of this court, that that convention is already determined to be a meeting of an illegal nature.

The next question is, whether you can pronounce this gentleman at the bar innocent. I will lay it down as a principle of law;—and not peculiar to this country; it is the prin-

ciple of the civil law, and I believe the principle of every law in every well-governed state,—that where a number of people are concerned in a crime, that all and each of them are guilty, art and part of acting in different parts of the commission of the crime, as some may have been more active than others, they are all of them in the eye of the law equally guilty, and liable to punishment; that is the law of Scotland, and I believe of every civilized country, and therefore if this is an unlawful society, the man that is president of that society, is liable for every thing done in that society; and is amenable to a court of justice for the crimes there committed.

Now, gentlemen, the question is, if this be a seditious society, whether you can pronounce Mr. Margarot innocent. In the first place, you see that the public prosecutor has established that he was sent down to that very meeting from England, as delegate; he comes down for no other errand under the sun. He leaves his business of a merchant in London, and attends this meeting in the character of a delegate; that I apprehend is taking a strong part in the proceedings of this seditious, illegal society. You see him at all the meetings almost, and you see him the most active of all the meeting. He is chairman upon one occasion, and he is making speeches and harangues upon another; and you will attend to that motion by which the convention of emergency was established, by which a committee of secrecy was established. The committee of secrecy consists of four members, and the panel is named one of the four, that is in evidence before you; and if you take all these things together, he comes down to Scotland, leaves his business in London, and attending these meetings daily; you see him taking the active part, making motions, and making that very important motion for a committee of secrecy; and he was named one of the committee. I leave it to you, gentlemen, whether you can pronounce him innocent of the crime of sedition.

Gentlemen, I own at the same time that this panel shows a good deal of ingenuity, though I cannot applaud his discretion or judgment. The crime charged is sedition; and I think he took up four hours in a defence, which was sedition from beginning to the end; finding fault with the constitution, and I think a speech of a very seditious tendency, and I will not trouble you with any more of it. I have given you the general idea of the case; if you are of opinion nothing is proved against this gentlemen, find him not guilty; on the other hand, if you think the facts and circumstances sufficiently brought home against him, you will find him guilty.

Tuesday, January 14th, 1794.—Half past one o'clock.

The names of the Jury having been called over, they brought in the following

VERDICT.

Edinburgh, Jan. 14th, 1794.

The above assize having enclosed, made choice of the said Samuel Anderson to be their chancellor, and the said John Balfour to be their clerk, and having considered the criminal libel raised and pursued at the instance of his majesty's advocate for his majesty's interest, against Maurice Margarot, panel, the interlocutor of relevancy pronounced thereon by the Court, the evidence produced in proof of the libel, and the evidence adduced in exculpation of the panel, they all in one voice find the panel, Maurice Margarot, GUILTY of the crimes libelled; in witness whereof, their said chancellor and clerk have subscribed these presents in their names, and by their appointment, place and date as above.

(Signed) SAMUEL ANDERSON, *Chan.*
JOHN BALFOUR, *Clerk.*

Lord Justice Clerk.—Gentlemen you have pronounced a very accurate verdict. This is a trial of great importance, and the country is obliged to you for the attention you have paid to the cause. If you have any thing to say, Mr. Margarot, now is the time.

Mr. *Margarot.* Undoubtedly I have, my lord. I did not yesterday start objections on futile grounds. I objected to the competency of the Court; I object to it at present; I informed your lordships, that I meant to bring an appeal against the whole procedure, in consequence of that incompetency. You thought proper, at that time, to repel my objection, but I now still sustain it: it is in consequence of the absence of the lord justice general of Scotland; I was charged to appear before him: he does not appear in his place; I did my duty, he neglected his, and the court was not full; and it certainly was necessary that he should attend, otherwise the indictment would have run, the lord justice general, the lord justice clerk or the other lords; instead of which, it ran, and the other lords of justiciary: that implies the absolute necessity that he should be in his place; or, otherwise, the Court was not even by the public prosecutor deemed complete.

I likewise mean to bring an objection, full as forcible, which is that which I experienced in the course of my trial. I was not able, though I had performed all the necessary legal ceremonies,—I was not able (because some men do not pay that respect to the laws which they ought to do) to adduce several of my exculpatory witnesses: your lordships refused to grant me a caption; your lordships refused to grant me a delay; consequently, the most material evidences, that I could have brought in my own defence, were entirely denied me: but, my lord, although that denial was in consequence of an assertion of this Court, that your jurisdiction did not extend to England; yet, a part of my indictment was founded on crimes, said to be committed in England, and relative to the

people of England. It is odd, that you should take cognizance, in this Court, of crimes relative to the people of England; when from England, you cannot compel the attendance of a single witness in my favour.

There is, my lord, an objection again, which is entirely local, which is confined to Edinburgh itself; I have summoned three men, as exculpatory evidences; two of them were attending, the third was not attending; but no notice was taken of him. These men I wish to call into court, to examine as exculpatory evidences for me. The lord justice clerk insisted upon my telling the nature of the questions I meant to put: I gave him the outlines of them, upon which the judges thought proper to refuse the admission of those evidences.

Another charge relates to yourself: I had ordered the messenger to summon your lordship upon certain facts which went to prove that it was very likely I had already, before my trial, been prejudged. Your lordship was not summoned, in consequence of the fear of this man of offending a person in power; but, at the beginning of the trial, your lordship told me, and the public prosecutor—to his justice be it said,—acknowledged that the legal point should be obviated, and that you should attend as an exculpatory evidence; but, when it came to the point, you refused to be put upon your oath, and to answer the questions proposed to you. Those questions went to criminate yourself, my lord; they remain unanswered by the advice of your brother judges. The consequence was, that my defence was neither so complete, my exculpatory evidence not so satisfactory, and I make no doubt but it is owing to that that the jury,—of whom I shall not take the least notice at present; that is the business of their country, not of me;—that the jury have thought proper to find me guilty.

There is another thing; should these objections be repelled, I have another to bring forward, that you will not so easily get rid of. It seems the custom of Scotland, that the witnesses are confined to a chamber by themselves, and no stranger admitted amongst them; that was not the case yesterday: a person, of the name of James Carlisle, was conversing with them a considerable time in the outer house. These are great objections for staying judgment. The two first objections go to cancel the whole proceedings, and the three last at least to staying of judgment. I have no more to say at present.

Lord Justice Clerk.—You will not be allowed to speak afterwards; and therefore, if you have any thing more to say, you must speak out.

Mr. *Margarot.*—I have nothing more. It was said yesterday, I was not versed in the laws of Scotland: it is true, I am not; but I have some slight knowledge of the British constitution; and I must observe here, that the proceedings of this Court have been a departure, *in toto*, from the British constitution. I will say no more; I await your sentence.

Lord *Henderland.*—My lords, this panel has stated the very same objections that he stated yesterday, except one, which states that there were strangers with the witnesses in the other room; and, if it was so, the officer who had the charge of them may be culpable and punishable; because it is contrary to the custom of the court. But, my lords, to say that it shall annul a verdict, or stay judgment, does not appear to me to be at all the practice. It is impossible for the Court but to proceed upon the verdict; and I must give my opinion upon this head, that it is not a valid objection.

Lord *Eskgrove.*—My lords, the panel now at the bar had more indulgence than the Court ever gave a panel before, because he was a stranger.

My lords, I cannot help taking notice of an insinuation, on the part of the panel, to the Court, by threats of impeachment, and threats of being brought upon our knees, or suffering the pains of death. I am happy the panel has not thought fit to renew that language to-day; yet I would not sit altogether upon this trial, without signifying my opinion, that if it had not been, that we held in contempt insinuations of threats to us, that are illegal, so, on the other hand, we will submit to every appeal that is competent; if there is any superior authority, we will readily submit to their decisions. But, my lords, it is not for this man, or any man, to think to terrify this country into a subversion of justice. Had he been a native of this country, he would not have been suffered to go on as he did. I approve of his conduct to-day, which is more temperate; but, for the sake of others who might be here yesterday, and some who may hear of it, I will say, that it is not the right of any prisoner to go out of his defence, and attack the Court, who are able to defend themselves when the attack is made.

I was of opinion, with my brothers, upon the objections yesterday, and therefore it is not to be supposed I should not be of the same opinion to-day, unless something new had been urged. The objection as to the lord justice general was fully answered yesterday, and does not deserve any notice. As to the question put to your lordship not being answered, it was not because of your being a judge in this court, but because of their being irrelevant to his defence.

As to his objection of a stranger being admitted with the witnesses, I am sorry that any such thing should happen. He may have been sent from either party, or he might have no connexion with any party; but it is a strange thing to suppose, that such an accident should make null and void all the proceedings of this Court against this panel; and I am the more surprised at that objection

being made, on account of his being a native of England, where he must well know, that it is the general practice that the witnesses are not at all inclosed, but they are in court during the time of the trial; not but we allow that it is sometimes ordered otherwise by the Court, and in this case it seems to have been by accident. It does not appear at all that he was tampering with the witnesses; and therefore no blame lies upon the Court; and it is needless to seek any redress in the way in which it has this day been done from this Court.

Lord *Swinton*.—My lords, the only new objection is, that a person of the name of Carlisle was admitted among the witnesses. If that was valid, the objection is now too late. It ought to have been made when they were brought to be examined.

My lord, every witness, in a most solemn manner, was sworn and asked upon oath, whether he was instructed or taught as to the evidence he was to give, and an answer was made by every witness upon oath, that he was not; and therefore, if there was any thing in the objection, it is done away by that; and therefore it is my opinion, that it should be repelled.

Lord *Dunsinnan*.—I am of the same opinion, and I do not think it necessary to enter any farther into it.

Lord *Abercrombie*.—I am of the same opinion.

Lord Justice Clerk.—I am entirely of the same opinion; and I will tell the panel, that if the Court were to sustain the objection, it would not avail him as an absolutary from the crime with which he is charged; even if it would make null and void all the proceedings; because he would be liable to be tried over again.

He must be convinced, that he has had a fair trial; he went on for four hours in his defence; he is a stranger in this country, and not having counsel, we allowed him to go on in a manner in which we would not have permitted a native of Scotland. He went on for four hours in such a way, as was contrary to the constitution of the country, and your lordships will now proceed in giving your opinions upon what shall be the result of this verdict.

Lord *Henderland*.—My lords, the jury having discharged their duty to their country, by a patient hearing of this trial, after, I am persuaded, a full consideration of the evidence, it remains for the Court to consider what may be an adequate punishment of the crime he stands charged with.

My lords, the crime of which he has been found guilty is sedition, and, as it is detailed in the minor proposition, taking an active and distinguished part in the deliberations and proceedings of a society, whose meetings were held under pretence of procuring a reform in parliament, but which were of a dangerous and destructive tendency, with a determined intention to disturb the peace of the community, and to subvert the present constitution of the country. My lord, it is a most dangerous crime, and most extensive indeed in its consequences.—It appears in evidence that this was a convention, forming themselves into a society, calling themselves 'citizens,' 'sections,' 'committees;' in short, assuming the form of a French parliament; thereby showing, that they wished proceedings to take place here of a similar nature to those of France. My lords, I fear not the sword of the enemy, or the poignard of the assassin, while sitting in my place, discharging the sacred office of a judge. I shall give my opinion as it strikes my feelings; I shall give my sentiments, as they appear to me to be supported by law. This charge is that of active sedition; and the distinction between this charge, and that of leasing-making, is an imperfect one; for it is to demonstration capable of being proved, that, before the union, there did exist a sedition, committed by words in false argument, by attacks upon the constitution, and upon the legislative bodies of the constitution. It can be demonstrated, by the records of this court, that there was a common law sedition, different from leasing-making; and upon which this Court held itself competent to found a libel, to infer an arbitrary punishment. Therefore, in whatever point of view I take the charge against this man (though I think it amounts to active sedition), I have no doubt that this Court has power to punish it, by the highest arbitrary punishment.

My lords, I doubt not that what I now say will be made public. I observe that it is falsely set forth, in one edition of a late trial, that I said, it wrung my heart to mention the crime of sedition. I am in the judgment of your lordships, and every man who heard me, I said no such thing—I said, it wrung my heart (and I own that it did), to see a gentleman, a young gentleman, who had received a gentleman's education, and who had discovered abilities not inconsiderable, should be the object of such punishment.

My lords, this gentleman is a stranger, and sorry I am that he should have come into this country. I regret, as I must do, the consequences it has had, and the conduct that he has assumed. It now becomes my duty, as a judge, to say what sort of punishment this crime deserves; and, my lords, I know no other way in which I could discharge my duty to God, to my country, and to my own conscience, but by proposing to your lordships, that this man should be banished forth of this kingdom by transportation; or, in common language, should be transported to such part of his majesty's dominions, as his majesty, in council, shall please to appoint; and there to remain for the space of 14 years, under pain and penalty of death, in case of return.

Lord *Eskgrove*.—My lords, the panel has

been found, by the verdict of a jury of his country, guilty of the facts charged against him. My lords, we yesterday gave our opinions upon the validity of the indictment; all, in one voice, finding that sedition was a high crime, by the laws of Scotland. Your lordships were also of opinion, that the facts charged and alleged by the public prosecutor, in the minor proposition, amounted to the crime of sedition. I will not now repeat what has been well observed by my lord Henderland, who has gone before me, as to the grounds of that opinion.

My lords, as the case at present stands, I am sorry this gentleman should have been guilty of such a crime; but a jury of his country have found, that he is guilty of the charges in this indictment; and therefore I in no way differ from your lordship in thinking, that the jury have discharged a duty to their country; but, if I had been of another opinion, my duty would have been one and the same, which is to pronounce the sentence of the law upon the person found guilty, by his country, of the crime charged, and carrying it into execution by a punishment suitable to the offence. It is unnecessary to go through the circumstances of this indictment, upon all of which the jury have returned a verdict, finding the prisoner guilty. My lords, it may amount to the finding him guilty of leading, as well as assisting, a number of people, styling themselves a sort of parliament in this country, for the purpose, as I stated yesterday, of subverting the constitution of the country; and then there is a more specific enumeration of facts; it sets forth, that they were to set at defiance the authority of the legislature; that even if an act was moved for, disagreeable to them, they were to meet in a secret convention; they thought fit to be concealed, in order to deliberate upon what was to be done; they were likewise to do the same, if there was an invasion; and what invasion is to be feared at this time, I leave to the judgment of every one who hears me. Also, in case of the landing of foreign troops, for the support of the government of the country, that was to be the cause of the sudden meeting of this convention: also, if the Habeas Corpus act was repealed: and lastly, if any interruption was given to their meetings, this convention of emergency was to sit. What conclusion can be drawn from such language, but that they meant to subvert the constitution of the country; that it was meant to be carried on in a style of defiance and opposition to the legislative authority of this country? Therefore, it is in vain for any person, pretending to know any thing of the law of Scotland, to say this is merely leasing making. I shall only say, that it would have been difficult, if it had not been for the alteration of the statute law, to know whether it would not have amounted to the crime of high treason.

My lords, the jury have found this man guilty: he is an Englishman; I am sorry that any of that country should ever have interfered in the peace and tranquillity, either of their own country, or of this, which is a part of the united kingdoms: but I think we cannot pronounce a less sentence in this case, than in the former cases; and if any difference is to be made, I do not think it is in favour of this defendant, who in his own country might have lived peaceably and quietly. My lords, there can be no sort of doubt with regard to the powers of the Court: by the laws of this country, before the act of 1708, banishment from the realm of Scotland was one thing, and banishment to a place beyond seas was another; and these were as well known at that time as at this. But, my lords, is it proper that a person from England, being found guilty of attempts to subvert the constitution, is it reasonable that we should return him to England, in order that he may continue his practices there if so inclined? If we were not able to do more, we could not help it; but, I say, the power of banishment, by transportation, has been long recognized in Scotland, as well as in England. The court can do no less than make use of the power which the law gives them, to send him to a place where he can do no harm. My lords, if I had any doubt about it, your judgment in the case of Mr. Muir, where I was not present, but where the other judges uniformly gave their opinion, that this mode of banishment, by transportation, was the proper punishment for such an offence; that would be sufficient for me to concur in the same opinion. If that punishment was not too much for Skirving, the secretary to this convention, who appears to be a simple deluded man, it cannot be too much for this gentleman, who is, so far as I can judge, a man of abilities, of considerable knowledge, and one who took the lead in this convention; and therefore I concur in the punishment mentioned by your lordship.

Lord Swinton.—My lords, I have no difficulty in concurring with your lordships in the punishment you have suggested; and, after what has been said by your lordships, I shall only take notice of a very few things. My lords, the crime of sedition is worse in one respect than most other crimes: many other crimes are committed from the sudden impulse of passion or heat; but this crime is committed with a premeditated, felonious intention, by deliberating upon the means of overturning our constitution. They begin with seditious and inflammatory discourses, endeavouring to draw simple and perhaps well meaning people after them, by pointing out imperfections which will be in every government whatever, and placing them in a strong light; and, in the next place, by seditious writings. My lords, in this case the delegates meet, and they appoint a convention of emergency; and what are these con-

ventions of emergency? first of all, for the purpose of over-awing parliament; and one of their resolutions is, to pay no regard to such an act of parliament, if it should pass; that is, they despise the legislative authority of the country. Then, in the case of an invasion; and it is easy to see what sort of an invasion was meant. I decline going through all the other particulars of this libel, which is found to be a true libel in every point.

My lords, what have they pretended? They have pretended a reformation in the constitution. I say, my lords, there is no need for it; our constitution reforms itself. With regard to trial by jury, which is the palladium, in my memory three acts have been brought in for reforming this point; one lately, giving juries a power to decide upon the whole matter, in case of libel;* and we have no need of such reformers as these.

My lords, if there is any difference between this case and that of others, the crime of this man is highly aggravated; he is not of this country; he does not feel any hardship from the government of this country; he comes from England for seditious purposes, as stated in this indictment; and therefore, if there is any distinction in this case, it is unfavourable to this panel. I am of opinion, with your lordships, that transportation for fourteen years is the proper punishment.

Lord *Dunsinnan*.—My lords, after the most patient hearing of this case by a jury, they have come to that determination which sensible, honest men alone could come to; namely, finding this panel guilty. There is no doubt but he has been sent into this country, in order to disseminate sedition; and it is evident that he was very sedulous in the execution of that office. The jury having found a verdict of guilty, it comes to the court to consider what punishment this crime deserves; and, my lords, though it is not pleasant to pass judgment upon a fellow-subject, crimes, dangerous as these, cannot be overlooked.

My lords, I am of opinion that this man's guilt is aggravated beyond that of others, who have been in the same circumstances; and that transportation for fourteen years is the proper punishment.

Lord *Abercrombie*.—My lords, it has been justly observed, that during the course of the trial, the panel now at the bar met with an uncommon share of indulgence; I believe far beyond what any court of justice, either in this or any other country, ever afforded a panel. My lords, I do not feel, and never shall feel myself disposed to say one word to load any man, who stands in the unhappy situation that he does; but I am sorry to observe, that from the moment he appeared at the bar, till the instant he was carried out, his whole conduct was of the most indecent kind. My lords, the crime with which he stands charged, and of which he is found guilty by the unanimous voice of his country, upon the most satisfactory evidence, is that of sedition; and my lords, his crime is highly aggravated by one circumstance, which appeared in the course of the trial, that he has been stirring up sedition in this country, and instigating such unhappy men, as you saw here yesterday—for example, one of the members of the British convention, who was so ignorant of the constitution of his own country, that he was obliged to admit that he never so much as read the claim of rights. My lords, is it to such men as these that we are to resort, to get a redress of the grievances of this country?

My lords, if we are to judge of the means he made use of from his speeches in the minutes of the convention, and the speech which we heard last night, sure I am, that his intention was to stir up a spirit of disaffection and discontent among the ignorant and the uninformed; and, my lords, I consider the circumstance of this panel being a stranger to this country as an aggravation of his crime.

My lords, this society called themselves originally the Friends of the People; they afterwards changed their name, calling themselves the British Convention of Delegates, associated to obtain Universal Suffrage and Annual Parliaments; a right which the subjects of this country never did enjoy; such a right would tend to bring ruin and destruction upon this country. I say, my lords, that to this man they owed that change, and that form which they assumed, and of which we have heard so much.

My lords, I shall only add, that the punishment proposed is the mildest, which, under all the circumstances of the case, ought to be pronounced.

Lord Justice Clerk.—My lords, after the full discussion which this crime has undergone, within these three months, I shall only just observe, that the crime of which this panel is accused, and now stands convicted by the verdict of a most respectable jury of this country, is sedition;—endeavouring to overturn the established government of this country, which is, of all crimes known amongst mankind, of the most heinous nature and the most dangerous tendency to society, and well merits the highest arbitrary punishment that this Court can possibly inflict.

You have had two trials before you, one within these few months, in which the panel was condemned to transportation for 14 years, and the other you condemned within these few days for the same term. The moment I heard the verdict I revolved in my own mind the circumstances attending this case; but it is impossible that we can, agreeably to the justice of the country, inflict a less punishment; the only doubt that occurred to me

* Stat. 32, G. 3d, c. 60.—See vol. 22, p. 306.

was, whether we ought not to go farther; for I did see a material difference; this case being attended with circumstances highly aggravated and offensive to the laws of this country. If this country suffers any grievances, I am sure he felt none of them: he lives not in Scotland; has no property there; and, as a stranger, he comes into this country a man with a great deal of abilities and great elocution,—he comes here for the express purpose of disseminating sedition among the lower order of people in this country, I cannot consider it as any thing but sedition highly aggravated. I did think that this crime deserved a more severe punishment; but I have always more pleasure in inflicting a mild punishment than a more severe one; and as your lordships are all of opinion, that we should inflict the same punishment as in the case of Skirving and Muir, I concur in the same opinion, that he shall be transported for the term of 14 years, with the usual certification.

SENTENCE.

The lord justice clerk and lords commissioners of justiciary having considered the foregoing verdict, whereby the assize all in one voice find the panel guilty of the crimes libelled: the said lords, in respect of the said verdict, in terms of an act passed in the 25th year of his present majesty, intituled an "Act for the more effectual transportation of felons and other offenders, in that part of Great Britain called Scotland," ordain and adjudge, that the said Maurice Margarot be transported beyond seas, to such place as his majesty, with the advice of his privy council, shall declare and appoint; and that for the space of fourteen years from this date; with certification to him, if, after being so transported, he shall return to, and be found at large within any part of Great Britain, during the said fourteen years, without some lawful cause, and be thereby lawfully convicted, he shall suffer death, as in cases of felony, without benefit of clergy, by the law of England: and ordains the said Maurice Margarot to be carried back to the Tolbooth of Edinburgh, therein to be detained till he is delivered over for being so transported; for which this shall be, to all concerned, a sufficient warrant.

(Signed) ROBERT M'QUEEN.

Mr. *Margarot*.—My lords, I thank you.

598. Proceedings before the High Court of Justiciary at Edinburgh, in the Case of CHARLES SINCLAIR,* on an Indictment exhibited against him by the Lord Advocate of Scotland, and charging him with Sedition, February 17th, 24th, March 10th, 14th: 34 GEORGE III. A. D. 1794.

Curia Justiciaria S. D. N. Regis tenta in Nova Sessionis domo de Edinburgh, decimo septimo die Februarii, millesimo septingentesimo et nonagesimo quarto, per honorabiles viros Robertum Mac-Queen de Braxfield, Dominum Justiciarium Clericum, Davidem Rae de Eskgrove, Joannem Swinton de Swinton, Dominum Gulielmum Nairne de Dunsinnan, baronetum, et Alexandrum Abercrombie de Abercrombie, Dominos Commissionarios Justiciariæ dicti S. D. N. Regis.

Curia legitimè affirmata.

Intran,

Charles Sinclair, residing or lately residing at the Black Bull Inn, head of Leith Walk, in the parish of St. Cuthbert's, and county of Edinburgh, panel,

INDICTED and accused at the instance of Robert Dundas, esquire, of Arniston, his majesty's advocate for his majesty's interest, for the crime of sedition, in manner mentioned in the criminal libel raised against him thereanent, bearing, that where by the laws of this, and every well-governed realm, sedition is a crime of an heinous nature, and severely punishable; yet true it is and of verity, that the said Charles Sinclair has presumed to commit, and is guilty actor, or art and part of the said crime; in so far as a number of seditious and evil-disposed persons having illegally assembled at Edinburgh during the months of October, November, and December, in the year one thousand seven hundred and ninety-three, the said Charles Sinclair, above complained upon, did repair to Edinburgh, with the wicked and felonious purpose of joining and co-operating with the said persons, and did accordingly become a member of the association formed by them, which originally did bear the name of "The General Convention of the Friends of the People," but which thereafter presumptuously and seditiously assumed the designation of "The British Convention of the Delegates of the People, associated to obtain Universal Suffrage and Annual Parlia-

* See the preceding and following cases.

ments." And which illegal association, under the names and designations aforesaid, did, during the months aforesaid, hold various seditious and illegal meetings at a room or mason lodge in Blackfriars Wynd, in the city of Edinburgh and county of Edinburgh, and elsewhere to the public prosecutor unknown; which meetings, though held under pretence of procuring a reform in parliament, did evidently in the whole form and manner of their procedure, as well as in the principles they publicly avowed and propagated, clearly and unequivocally demonstrate that their purposes were of the most dangerous and destructive tendency, hostile to the peace and happiness, and tending to subvert the constitution of this realm; imitating in the form and tenour of their proceedings, the convention of France, the public and avowed enemies of this country, and with whom Great Britain then was and still is at war; the members of the said meetings calling each other by the name of *citizen;* dividing themselves into *sections*, receiving reports from said sections, some of which bear to be dated from *Liberty Court, Liberty Stairs, Liberty Hall, First Year of the British Convention, one and indivisible*, and some of which have *Vive la Convention*, prefixed to them, and end with *ça ira*, instituting *primary societies, provincial assemblies*, and *departments*, appointing committees of various kinds, such as of organization, of *instructions, finance*, and *secrecy*, denominating their meetings *sittings;* granting *honours* of *sittings*, and inscribing their minutes *the First Year of the British Convention*, and making *honourable mention* in the minutes of *patriotic donations*. And moreover, the members of the said seditious association, under the designations aforesaid, did, at times and places above mentioned, make harangues and speeches, as well as motions and resolutions, of a seditious tendency, the substance of all which was under their authority, at least with their knowledge and approbation, not only minuted but published in a newspaper, intituled "The Edinburgh Gazetteer," and through that medium circulated among the lieges. And the said Charles Sinclair, above complained upon, was not only present at the foresaid illegal meetings, and approved of the seditious resolutions and whole procedure made and had there, but was himself an active member of the said illegal and seditious association, and did at times sit as president thereof; was a member of the committees and sections of the same, and assisted therein; and did himself wickedly and feloniously make motions, and utter speeches both of an inflammatory and seditious tendency: and particularly, the said Charles Sinclair did, upon the twenty-third day of November, one thousand seven hundred and ninety-three, or some one or other of the days of that month, or of the months aforesaid at Edinburgh, and within the room or mason's lodge aforesaid, wickedly and seditiously make the following motion, or one of a similar import and tendency. "That the said meeting should henceforth be called the British Convention of Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments"—which motion was unanimously adopted by the said meeting or association. And thereafter, upon the same day, and at the place aforesaid, the said Charles Sinclair did wickedly and feloniously address himself to the said association or meeting in a speech to the following or similar import:—

"I believe there are none here who have not felt the most lively sensations of joy and affection on partaking in the solemn transaction which has just now taken place, but let us not neglect those who are afflicted in a neighbouring country—let us remember our brethren in Ireland. They have a sham parliament, which lords it over them, and they cannot have the pleasure of meeting as we do now: I have therefore drawn up the following motion respecting them, which I shall now read to the convention."

"The *British* convention of delegates of the *People* associated to obtain universal suffrage and annual parliaments, taking into their consideration the oppressed state of their brethren in Ireland, and the unconstitutional act of the last session of the parliament of that kingdom, called the convention act; and seeing with indignation, that by it the people of Ireland were deprived of those rights, cheaply purchased with the blood of our common ancestors, and which are confirmed and secured to us by the great charter of our liberties, resolved,

"That all or any of the patriotic members of the society of united Irishmen of Dublin, shall be admitted to speak and vote in this convention."

And which motion having been discussed by the said meeting, or association, upon the twenty-fifth day of the said month of November, or some one or other of the days or months aforesaid, and at the place aforesaid, the same was agreed to and "guaranteed by a solemn joining of hands; it being followed by a motion for transmitting the above resolution to citizen Archibald Hamilton Rowan, which passed accordingly." And further, at a meeting of the said association, upon the said twenty-fifth day of the said month of November, or upon some one or other of the days of that month, or of the months aforesaid, Alexander Callender, one of the members of the said meeting, having, at the place aforesaid, made the following motion, or one of a similar tendency, viz.—"That in case the minister, or any other member of either House of Parliament, bring forward a motion for leave to bring in a con-

vention bill, such as has passed in Ireland, to prevent the people from meeting according to their just rights by the revolution, the same motion shall be notice to the delegates to meet in convention, to assert their rights." The said motion was made the subject of discussion in the said meeting, within the room or mason lodge aforesaid, upon the twenty-seventh day of the said month of November, or on some one or other of the days of that month, when the said Charles Sinclair, above complained upon, did wickedly and feloniously propose sundry amendments thereto, of a wicked and seditious tendency? And the said motion, with the amendments thereupon proposed by him or others, having been by the said meeting referred to the said Charles Sinclair and some others of the members of the said meeting, as a committee to draw up a motion from the whole, the said Charles Sinclair, above complained upon, did, upon the twenty-eighth day of the said month of November, or on one or other of the days of that month, or of the months aforesaid, within the room, or mason's lodge aforesaid, wickedly and feloniously read to the said illegal meeting, when there assembled, the amendments upon the foresaid motion, as agreed upon by him and the said committee, when the said illegal and seditious meeting, did wickedly and feloniously, then and there, solemnly and unanimously come to a resolution of the following import or tenour:—

"That this convention considering the calamitous consequences of any act of the legislature which may tend to deprive the whole, or any part of the people of their undoubted right to meet either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our known and acknowledged constitutional liberties, do hereby declare before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country; and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people, and annual election, until compelled to desist by superior force." And we do resolve

"That the first notice given for the introduction of a convention bill, or any bill of a similar tendency to that passed in Ireland in the last session of their parliament, or any bill for the suspension of the *Habeas Corpus act* or the act for *preventing* wrongous imprisonment, and against undue delays in trials in North Britain; 'or in case of an invasion;' or the admission of any foreign troops whatsoever into Great Britain or Ireland; all or any one of these calamitous circumstances, shall be a signal to the different delegates to repair to such place as the secret committee of this convention shall appoint; and the first seven members shall have power to declare the *sittings permanent*; and twenty-one shall constitute a convention, and proceed to business.

"The convention doth therefore resolve, That each delegate immediately on his return home, do convene his constituents, and explain to them the necessity of electing a delegate or delegates, and of establishing a fund without delay, against any of these emergencies, for his or their expenses, and that they do instruct the said delegate or delegates to hold themselves ready to depart at one hour's warning."

And further at the same time, and within the same place, after the foresaid resolution had been so made, a motion was made in the said meeting in the following words, or in words of a similar import and tendency:—"That a secret committee of three, and the secretary, be appointed to determine the place where such convention of emergency shall meet, that such place shall remain a secret with them, and with the secretary of this convention; and that each delegate shall, at the breaking up of the present session, be entrusted with a sealed letter, containing the name of the place of meeting. This letter shall be delivered unopened to his constituents, the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state until the period shall arrive at which it shall be deemed necessary for the delegate to set off."—The said meeting did wickedly and seditiously unanimously approve of the said motion.—And at a subsequent meeting upon the fourth day of December, one thousand seven hundred and ninety-three, or upon one or other of the days of that month, or upon one or other of the days of the months aforesaid, and within the said room or mason-lodge aforesaid, it having been moved by one of the members then present,—"That the moment of any illegal dispersion of the present convention, shall be considered as a summons to the delegates to repair to the place of meeting, appointed for the convention of emergency by the secret committee, and that the secret committee be instructed to proceed without delay to fix the place of meeting."—The said meeting did unanimously resolve the same, and appointed a secret committee to proceed as desired. And the said Charles Sinclair, above complained upon, having been apprehended upon the fifth of December, one thousand seven hundred and ninety-three, in consequence of a warrant issued by the sheriff of Edinburgh; and having been carried before Harry Davidson, esquire, sheriff substitute of the shire of Edin-

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burgh, on the seventh day of the said month of December, one thousand seven hundred and ninety-three, did, in his presence, emit a declaration, of which, part is signed by the said Charles Sinclair, and the whole signed by the said Harry Davidson. And sundry papers having been found in the possession of the said Charles Sinclair, when apprehended, and the same having been afterwards inspected in his presence, and in presence of the said sheriff substitute, upon the said seventh of December, one thousand seven hundred and ninety-three, an inventory of the same was made up, which is subscribed by the said sheriff substitute. Which inventory, together with the whole papers contained therein, consisting of twenty-one articles, as also the foresaid declaration, emitted by the said Charles Sinclair, before the sheriff substitute of Edinburgh, as also copies of numbers 78, 79, and 80, of the newspaper called—"The Edinburgh Gazetteer."—Also the scroll or draught of the minutes of the said general convention,* from the twenty-ninth of October, to the fourth of December, one thousand seven hundred and ninety-three, consisting of ninety-five pages, and found in the custody of William Skirving, secretary to the said convention, when apprehended by warrant of the sheriff of Edinburgh, in the month of December last, being number first of the inventory of papers, found in the said William Skirving's possession when apprehended, and made up in presence of the sheriff substitute of Edinburgh, upon the fifth day of the said month of December, also the inventory itself, with the whole of the other papers and writings therein contained: And also two inventories made up before the sheriff substitute of Edinburgh, on the seventh day of December last, of sundry papers found in the possession of Joseph Gerrald, and Maurice Margarot, two members of the said convention, when apprehended in consequence of a warrant from the sheriff of Edinburgh, one of which inventories, consisting of ten articles, subscribed by William Scot, procurator fiscal of the county of Edinburgh, and the said Joseph Gerrald, and the other consisting of nine articles, subscribed by the said William Scot, and the sheriff substitute of Edinburgh, together with the whole articles contained in the said two inventories, excepting number first, being all to be used in evidence against the said Charles Sinclair, will, for that purpose, in due time, be lodged in the hands of the clerk of the high court of justiciary, before which he is to be tried, that he may have an opportunity of seeing the same, at least, times and places above-mentioned, the said acts of sedition were committed, and the said Charles Sinclair is guilty, actor, or art, and part thereof,—all which, or part thereof, being found proven by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary, to be holden by them within the criminal court-house of Edinburgh, upon the seventeenth day of February instant, the said Charles Sinclair above complained upon, ought to be punished with the pains of law, to deter others from committing the like crimes, in all time coming.

The libel being read over in open court, and the panel being interrogated thereupon, he answered he was Not Guilty.

Pro'rs for the Prosecutor.—Robert Dundas, of Arniston, esq. his majesty's advocate.

Mr. *Robert Blair*, advocate, his majesty's solicitor-general; and

Mr. *James Montgomery*, advocate.

Pro'rs for the Panel.—The hon. *Henry Erskine*, dean of faculty; and

Mr. *Archibald Fletcher*, advocate.

Mr. *Fletcher*, the junior counsel for the panel, commenced by observing, that after the judgments which the Court had already given on the relevancy of libels similar to the present, it might appear presumptuous in him now to offer any objection upon the point of relevancy; but he requested the Court to recollect that in the former cases decided in this court, the panels had not the aid of counsel, from which it happened that the objections in law which he was now to state had not been brought under the view of the Court. He farther observed, that without regard to this circumstance, it was both his duty and his right, in behalf of his client, to state every competent objection to the relevancy, in the same manner as if this were the very first instance in which the question came under the consideration of their lordships.

On the merits of the case itself, he contended, that in the criminal justice of every free country, it is an inflexible rule, that in every libel on which any person is brought to trial, the law on which he is to be punished, and the nature of the crime of which he is accused, ought to be expressed with clearness and precision, in order to enable him with advantage to come prepared to defend himself against the accusation; but in the present libel this essential rule of criminal justice is violated at least in two very important particulars: for 1st. the libel is vague and uncertain with respect to the law, in virtue of which the panel is to be tried and punished: inasmuch as it had not informed the panel whether he was to be tried by the statute law, or by the common law of the land. 2dly. The libel is uncertain or ambiguous, with respect to the species of crime of which the panel is accused. It states in general that "sedition is a crime," but does not mention in the major proposition of what species of the crime the panel is accused, whether of verbal or of real sedition. He farther observed, that the libel was uncertain even with respect to the

* See the case of William Skirving, page 391 of this volume.

punishment; because from it the panel could not know whether he was to undergo the punishment of verbal sedition by the act 1703, which was only arbitrary; or whether he was to suffer the punishment of real sedition, which was punishable, as treason, by death. He then contended, that to send a libel of this kind, attended with so much ambiguity and uncertainty in its structure, to the knowledge of an assize, was inconsistent with the boasted freedom of our constitution, and equally inconsistent with the character of criminal justice in every free country.

In this situation, therefore, it must be argued on the facts as stated in the minor proposition. The panel is only charged with having attended meetings, where he made harangues said to tend to the raising of sedition, but without having actually produced any commotions, or rising of the people, to obstruct the regular execution of the law. Now the facts there stated when duly considered can amount to nothing more than verbal sedition, or leasing making, and so falls under the act 1703, and can be punished only under that statute. Real sedition consists in acts, or raising the people to resist the ordinary course of law; and verbal sedition or leasing making in words only, and so cannot be blended together, for the law has distinguished between them, and affixed a different punishment. Now, from the facts in the minor proposition of the present libel, real sedition cannot be inferred; but compare them with leasing making, they will be found precisely to correspond.—Vide act 1424, cap. 3; 1555, cap. 60; 1584, cap. 134; 1585, cap. 10; 1595, cap. 209; 1609, cap. 9;—from all which it will appear that the offence charged against the panel was only verbal sedition or leasing making, and of course fell under the act 1703, which limited the punishment of that offence to fine, imprisonment, and banishment.

Mr. Fletcher then entered on an examination of the question, what was the meaning of the word *banishment* used in the act 1703; and he contended, that it meant exile or expulsion forth of the kingdom only, *exclusive* of the idea of transportation, which last he maintained never was a punishment of the common law of Scotland prior to the act 1703. This proposition he endeavoured to establish by arguments drawn from the authority of sir George Mackenzie [title punishments] from the very nature of the jurisdiction of the courts of common law, which could exercise no power beyond their own territory, and from an examination and comparison of several statutes before the 1703, particularly one in 1609, in which it was clear the term banishment was used as significant of exile or expulsion forth of the kingdom only, and not transportation; and which act of 1609 was confirmed by and recited in the act 1703.

Having dwelt for a considerable time on these various topics of argument, Mr. Fletcher concluded by observing, that as the offence charged against the panel was leasing making or verbal sedition, which fell clearly under the act 1703, regulating the punishment of that offence, this, and the other statutes referred to in it, ought to have been specially libelled, according to the uniform practice of the court in former times, from the Revolution, down to a very recent date; and that on account of this defect of not libelling the statutes, and the uncertainty of the libel with respect to the species of crime meant to be charged, it ought to be found not relevant, and, that at any rate, the Court, in the judgment on the relevancy, ought to find the libel relevant only to infer the pains of the act 1703, and to ascertain the meaning of the term banishment used in that statute, in order that the jury might with certainty know of what species of crime the panel was accused, and what punishment he was to suffer in the event of his being convicted.

The *Solicitor General* said, that Mr. Fletcher had stated the defence with much ability and very great propriety. He heartily concurred with him in the observation he had made in the outset of his speech, that although some indictments had been already tried, worded nearly in similar terms, yet that the decisions in these cases ought not to be esteemed as *res judicatæ* against him; and he was convinced that if their lordships should be of opinion, that they had acted improperly in sending them to the knowledge of an assize, they would cheerfully correct that mistake in the present instance. He should, therefore, argue the case as if no such proceedings had taken place. The crime charged in the major proposition of this indictment is sedition. Now Mr. Fletcher seemed to object, that we ought, not only to have stated sedition to be a crime, but ought also to have mentioned the particular law by which it was made punishable.—In no case is it necessary where a libel charges a crime to explain upon what law it is laid. In the case of murder, or of robbery, for example, it is not necessary to specify the statute by which they are declared criminal; but merely to say that they are crimes by the laws of this realm.

To give a precise definition of sedition would be difficult, perhaps impossible; but I have no hesitation in giving this definition of it,—that the act charged must be unauthorized by law, and must be done with an intention to disturb the peace of the community. Sedition is divided into *real* and *verbal*. The facts charged here amount to both verbal and real sedition; and real sedition of a most atrocious nature. Real sedition consists in acts to disturb the constitution of the country, or to excite others to do so.—Seditious acts must be capable of being committed in a variety of ways, indeed so broad as hardly to admit of a general definition. Mr. Erskine says, that "real sedition is inferred from an irregular convocation of a number of

people, without lawful authority, tending to obstruct or trouble the peace of the community;"* and from perusing the facts stated in the libel it clearly appears, that the British Convention held at Edinburgh, assembled for the *glorious* purpose of obtaining *Universal Suffrage* falls under this very definition.—Had it been accompanied with the rising up of the people it would have ceased to be sedition, and would instantly have become high treason.

To show that sir George Mackenzie only meant to give a particular and not a general definition of sedition, Mr. Solicitor here read a quotation from sir George Mackenzie on one of the acts relative to leasing making, where he says that sedition is a crime which receives different degrees of punishment according to the degrees of guilt, and that although it was made a capital offence, the king's advocate had the power of framing his libel so as to restrict it to an arbitrary punishment. I know of no crime, said Mr. Solicitor, that deserves to be so severely punished. It is the forerunner of another and a greater crime. The *regiam majestatem* declares "*seditio tegni*" to be punished with death, "*quia tangit personam Domini regis.*" There are a number of different gradations from this crime, which are punished according to the nature of the offence, by an arbitrary punishment, and at the head of which, I have no hesitation in declaring stands the present.

Some species of these have been taken out of the common law by particular statutes, declared to be high treason, and punished as such. One of them,—act 1584, "anent the authority of the estates of parliament," very much resembles the present case. By it, it is provided, "that none of the lieges take on hand to impugn the authority of the said three estates, under the pain of death." That the British Convention had come to resolutions very similar to what was provided against by this statute, is evident; for they had resolved, "That in case the minister, or any other member of either House of Parliament bring forward a motion for leave to bring in a convention bill, such as has passed in Ireland, to prevent the people from meeting according to their just rights, by the Revolution, *the same motion shall be notice to the delegates, to meet in convention to assert their rights.* It is, no doubt, true that the act I have alluded to, was so far abrogated in the reign of queen Ann; and although it is not now punishable by death, yet it remains a crime punishable in an arbitrary manner, at the discretion of the court. Sedition is well known and understood in the common law independent of the statutes altogether, and was punished according to the nature of the offence; and therefore the charge here made is not leasing making, nor laid upon any of the acts but as sedition, and sedition and leasing making are by no means synonimous terms.

The defence set up for the panel amounted to this, that the facts stated in the minor proposition, amounted only to *leasing making.* The facts do not amount to leasing making, but to a great deal more. An act may be leasing making which is not sedition, and an act may be sedition which is not leasing making. Supposing a number of persons shall assemble together in a seditious manner, and solemnly resolve not to pay any attention to the acts of the legislature, and excite commotions and discontent among the people; can any man consider this as leasing making? surely not. Had I called this leasing making in the indictment, I should have been laughed at.

Mr. Solicitor here adverted to the different names borrowed by the British, from the French convention, and said, that although the names of citizen, &c. might be innocent enough in themselves, yet after what we have seen, after what we have heard, is it to be imagined, that any person in this country, suppose reform had been ever so necessary, would, under the pretence of obtaining a reform, have been so far lost to the common feelings of humanity, as to assimilate their proceedings to those of the national convention of France, which had proceeded to such acts of barbarity, as had disgraced human nature; and made us almost blush to be men? This was a conduct which posterity would scarcely credit.

Mr. Solicitor then read a resolution of the convention, upon a motion brought forward by Mr. Sinclair, upon which they "*solemnly* and *unanimously*" came to a resolution of the following import or tenour:

"That this convention, considering the calamitous consequences of any act of the legislature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our known and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act, which shall militate against the constitution of our country; and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people, and annual election, until *compelled to desist by superior force;*

"And we do resolve

"That the first notice given for the introduction of a convention bill, or any bill of a similar tendency to that passed in Ireland, in the last session of parliament; or any bill for the suspension of the *Habeas Corpus* act,

* See Erskine's Institutes, book 4, title 4. 89.

or the act for preventing wrongous imprisonment, and against undue delays in trials in North Britain; or in case of invasion; or the admission of any foreign troops whatsoever into Great Britain, or Ireland; all, or any one of these calamitous circumstances, shall be a signal to the different delegates, to repair to such place as the secret committee of this convention shall appoint; and the first seven members shall have power to declare the *sittings permanent;* and twenty-one shall constitute a convention, and proceed to business. The convention doth therefore resolve, that each delegate, immediately on his return home, do convene his constituents, and explain to them the necessity of electing a delegate, or delegates, and of establishing a fund, without delay, against any of these emergencies, for his or their expense; and that they do instruct the said delegate, or delegates, to hold themselves ready to depart at one hour's warning."

Is this resolution *leasing making?*—A resolution of the most audacious nature!—A resolution to contemn the acts of the legislature. Supposing parliament should pass any such act, this was to be a signal to these men to assemble. What would have been the consequence? Had not this conspiracy,—I can call it by no other name,—been checked in the bud, by the humanity of the civil magistrate, these men would now have been tried for high treason, instead of sedition, and then the penalty of their crime would have been paid by the forfeiture of their lives: or, had they been allowed to carry their schemes into execution with success, then might Britain have bidden adieu to peace, and all those inestimable blessings and privileges which we at present enjoy, and hold so dear. Although the panel had only been charged with leasing making, under the act 1703, it would not have made the smallest difference. Under that act, your lordships have the power of inflicting the punishment of transportation, if you think the circumstances require it. At first view, to a person, not acquainted with the law of Scotland, some doubt might arise with respect to this. Prior to that period, two different species of banishment were in use; one *furth of the kingdom*, the other *to a particular place:* such was the practice at passing the act 1703. If sir George Mackenzie said that the latter species of banishment was not introduced into our common law, he must have been grossly mistaken. A power of transportation is inherent in the Court, and recognized by the act 1701: by that famous act,—an act made for the purpose of increasing the liberty of the subject,—it is declared that no person shall be transported, *without the sentence of a legal court.* There was no *statute* for transportation before that period, but there was a power at common law to inflict that punishment. The act 1703, abrogates the capital punishment *quoad* leasing making, and declares it to be punished by banishment; but as there were two different modes of banishment then in use, and as there was nothing to limit the signification to one of them, it must be understood to extend to both. It is impossible to imagine, that when the legislature saw the court of justiciary banishing people to the East Indies, if they wished to restrict it, they would, in doing so, employ the very word used by the court of justiciary in these sentences. That the banishment mentioned in the act 1703 for leasing making, unquestionably was understood to mean transportation, may be seen in a variety of cases about that time; and in particular in the case of David Baillie,* who was indicted before the privy council of Scotland (a court possessing very great jurisdiction) in February 1704, no more than five months after the act 1703 passed for the crime of leasing making; he was convicted and sentenced to be pilloried and transported to the East or West Indies. And from the sederunt, it appears that both the lord president of the session, the lord justice clerk, and all the great people of the law were present; and the panel was assisted by six able counsel.

Although it is not common for lawyers to pledge their characters to their opinions in points of law, as counsel might frequently differ on that head, yet in this case I do not hesitate, in the most explicit manner, to assert it as my positive opinion, that this act allowed transportation; and I am certain, that if such a question occurred in a civil case, no counsel would venture an opinion, that the act did not extend to both the species of banishment then in use.

The *Lord Advocate.*—Although this question has been so ably and eloquently stated on the part of the prosecution, I cannot refrain from saying a few words, as the point is yet to be argued by the first abilities at the bar.

If the indictment be ambiguous in its structure, there is no censure too severe, to which the public prosecutor is not liable; but I trust I shall be able to defend this indictment. If I have gone wrong, I have done so through inability to understand the criminal law of this country; and not through precipitancy.

The facts contained in the minor proposition of the indictment, are amply sufficient, and must certiorate the panel, that the crime founded on is *real* sedition. Sir George Mackenzie defines sedition to be, exciting *commotion among the people;* but I am told, that there must be not only a *commotion*, but an *insurrection*, to constitute *real* sedition. This doctrine is inconsistent with law, and a solecism in common sense, for the moment it arrives that length, it loses the name of sedition, and amounts to high treason. Sedition is a crime of a different die, although perhaps not differing in its nature from that

* See his case, *antè* Vol. 14, p. 1035.

of treason, to which it ultimately and necessarily tends. It is an actual commotion of the people—a course of proceedings of an illegal kind, exciting the people to molest and disturb the public peace; and the actual engaging in, and fomenting such commotion, which constitutes the crime of sedition, and of which the panel is positively, distinctly and clearly accused. Of this opinion is sir George Mackenzie; for he says that if the object and purpose of the commotion is different, if it tends *ad exitium principis, aut ad mutationem republicæ*, it ceases to be sedition, and becomes treason: if it does not go that length, it remains the crime of sedition, and is punishable as such.

His lordship quoted an opinion, which stated, that the raising of the people to disturb the peace, and making bonds or leagues among the people, is sedition. The mere convocation of the people within burgh, for obtaining redress of grievances, or any other cause, is, by act of parliament, declared to amount to the crime of sedition.

[Here his lordship read several acts, such as the acts 1457, and 1491, prohibiting the holding of *leagues* or *bands within burgh*, under the pain of their goods being confiscated, and their lives forfeited; and the act 1606 prohibiting all persons from taking upon them to assemble without giving intimation to the public officers, which declares such meetings to be factious, and seditious.]

His lordship next referred to the charges in the libel, stating that Charles Sinclair came into this country to attend a seditious meeting, which he repeatedly attended, and at which he made several speeches; and which assembly, or British convention, met for the express purpose of resisting the parliament of these kingdoms, and continued to meet till they were dispersed by the civil magistrate.—They assembled themselves as a British convention, and declared their intention to resist the authority of parliament, until by superior force they were dispersed. Is not this sedition? Is not this what sir George Mackenzie calls a seditious convocation? The only real and grave reasons for doubt are, whether it does not amount to the crime of high treason, although I do not pretend to be altogether versant in the law of England, yet, from what judgment I have been able to form of the statute of Edward 3d, I am fully persuaded, that if the members of the *British convention* had been tried in England, they would not have escaped so easily, but must have been tried for high treason. They professed themselves to be the *delegates* of the people of this country, a name applicable to none but the members of the British parliament; and they had assembled too, as appears from their own resolutions, for the purpose of opposing the measures of government, and *ad mutationem republicæ*. Unless therefore sedition be a crime not known in the law of this country, the British convention was clearly a *conventus seditiosus*.

After the very able manner in which Mr. Solicitor General has already argued the question, I shall not trespass further upon your lordships time.

The Dean of Faculty.—An idea has gone forth in the country, that the persons lately tried have suffered, because they had no counsel. I think proper to refute this notion, because the respectable body to which I belong, are always ready to give their assistance to whoever may come before a Court; but as the question has also been agitated in different circles, I thought it would be better that it should be solemnly discussed, and determined by the Court.

The dean paid many handsome compliments to the lord advocate, and freed his lordship entirely from any wish to narrow the indictment; but at the same time argued, that the minor proposition was not so full, nor so closely stated as it might, or ought to have been.

I hold it to be a clear proposition, that the object of the minor proposition is to point out to the panel, as clearly as the thing will admit, the nature of the charge against him. When we say murder is a crime of a heinous nature, it requires not the turning up of a statute to ascertain what is the nature of murder; but there are crimes of a generic nature which require a farther explanation. In the late case of the starch-makers, there was a whole page explaining the nature of the crime. If in society there are crimes existing, or can exist, which demand a particular description or definition, these certainly are treason and sedition, for they are connected with so many circumstances, and of such qualities as renders such an explanation highly necessary. That treason and sedition are crimes of a heinous nature no person can deny. If they were not crimes at common law, a country intending to make a law to protect itself to-morrow, might be overturned to day. But in every state it becomes necessary to make particular statutes against particular offences. Accordingly your lordships will see particular statutes directed against the crime of sedition, from the *regiam majestatem* downwards. If the lord advocate and the dean of faculty, who were bred to the law, were not at one upon the meaning of these statutes, how should the panel at the bar, who is no lawyer, be supposed to understand them? The dean then stated the case of a person tried for beating a minister of the gospel, where the statute was not recited, in which case their lordships, by their interlocutor on the relevancy, supplied that defect.

The dean remarked, that he could not disapprove of the warmth which the solicitor general displayed when describing the situation of France; but he observed that although he argued this question in order that a judgment may be pronounced by their lordships

as to the relevancy, yet he must not be understood as approving of that system of government, if it might be so called, which now prevails in France. With respect to that he would adopt the strong language used by a member of the House of Commons on the opposition bench, "that he would prefer living under the government of Domitian or Nero, rather than that tyrannical government now exercised in France."

With respect to those acts of parliament regarding convocations of the people, he must observe, that they were passed when this country was in a very unhappy state of government. One was passed to prevent the meeting of the general assembly of the church of Scotland, which was held at Aberdeen against the king's will. In short, they were made to prevent all meetings of whatever kind; so that two or three could not meet together unless in the king's name, and by his permission.

If the acts which respected convocations of the people comprehended sedition, what then would become of all the fair ladies who now filled the galleries of this Court?—Why, the lord advocate might carry all of them and us together to prison as seditious persons.—Indeed those acts as they forbid any kind of meeting, so of consequence they include such as may be held to support government, as well as those of a contrary description.

The dean farther observed, that he and the lord advocate had both attended county meetings, called for the express purpose of obtaining a reform in the laws for electing members of parliament, and yet no such interpretation was given to their meetings as this act would infer. The lord advocate has said, that rising against the king is treason, and rising on a private account is sedition; there is, however, no rising charged in this case, but only a charge of certain speeches having been made *tending* to excite rising; therefore it is only verbal sedition. If the lord advocate says that a rising of the people is sedition, he may take his argument; the panel never did rise, and it is to be hoped he never will rise.

About the time of the union, it was found necessary to define and arrange the laws regarding state offences. Now, when the act 1703 was passed, treason was declared punishable with death, and leasing making was declared punishable by fine, imprisonment, or banishment. Had the legislature not considered that sedition was comprehended under one or other of these, it would have been specially mentioned. It would appear, that all which a man can say or write is punishable as leasing making, and all that a man can do is punishable as treason. *Raising* sedition is different from doing what *tends to raise* sedition. To *advise* war is very different from raising war.

The libel charges the panel and others with having resolved not to obey a certain law if such should be passed by the legislature. But have they done more? Perhaps when such a law does pass they will think otherwise; and until they go farther than merely this resolve, the crime cannot go farther than leasing making. If there is any law which punishes active sedition with any thing short of death, then the lord advocate should produce it. Sedition appears to have become a common law crime since 1703. Banishment can never imply transportation, although transportation may imply banishment. Banishment only expels a man from the city or country where he is. And surely no person in court can be at a loss to undestand the meaning of the word banishment, for all have in part felt it, in so far as they were involved in that which was pronounced against our first parents when they were banished from the garden of Eden. But by this sentence they surely were not transported; no—they were led out of the garden and were dismissed with these words:—

"The world is all before you, where to choose
Your place of residence, and Providence your guide."

When a gentleman is banished from the presence of his mistress, it surely does not follow that he is to be transported:—it only implies that he shall not come where she is. If banishment includes transportation, then it becomes two punishments. Is it the same thing to say to a man, "Sir, you must go out of Scotland; across the borders," from whence it is more than probable he will never wish to return; or to take him in manacles, throw him into the hold of a ship, and carry him to a distant part of the world for fourteen years? Where banishment is mentioned in any act of parliament, it certainly precludes a heavier punishment. So, for instance, when a man is sentenced to be hanged, it certainly is not understood that he shall also be hung in chains.

But it would appear, that the soundest lawyers were of opinion, that this Court cannot inflict the sentence of transportation by common law. A sheriff cannot banish beyond his jurisdiction, neither can any other judge. Could any of your lordships banish a criminal to Denmark? Surely not. The jurisdiction of this Court does not extend there. Such banishment must either be by the laws of that country to which he is banished, or by authority of your own legislature, who must have power over the country to which he is banished.

Suppose, said the dean, that a man comes down from England, and is guilty of a crime, could your lordships, wishing to have the punishment put in force in his native place, order him to be whipped at York? He then took notice of an act, authorizing their lordships to transport those who refused to swear against the conventicles, and maintained that if their lordships had then been *in plená potes-*

tate of transporting, there would have been no necessity for that act.

In the cases of transportation mentioned by Mr. Solicitor General, when asked, he said he had not taken a note of the crimes for which they were transported; but what he has omitted I have attended to. These were cases where capital crimes were committed, and it was put in the option of the panel either to suffer death, or be transported.

The dean contended, that there can be no punishment at common law for crimes particularized in the act 1703; that the act 1703 relates to the act 1609, a time when there was no such thing as transportation, and that it was absolutely necessary that the word transportation should have been used in that act, if it was intended to infer such a punishment; and that this offence must either be considered as treason or leasing-making.

Upon all these grounds, therefore, the dean contended, that the Court must either dismiss the libel, or else, that it must be found relevant to infer the punishment contained in the act 1703 anent leasing making.

Lord *Eskgrove*.—I am happy that this point has been argued by counsel; but, in the former cases, though no counsel appeared, the Court considered well and deliberately before they gave judgment, and held themselves *then*, as I hope they always will do, as counsel for the panel, and inclined to the side of mercy.

Although I listened with the greatest attention to the arguments for the panel, I am not in the least degree shaken in the opinion which I formerly entertained from what I have this day heard. I wonder how it could have been doubted, that the indictment here was relevant. The crime charged is one which the common law, and that of almost every state must punish independent of statute.

As to the first objection "of the charge being too vague and general," I may, in answer, appeal to every indictment that has been brought before this Court since the revolution. The *major* proposition almost always is *general*. It is laid sometimes on the "laws of God," but oftenest on the "laws of this and every well-governed realm," without specifying any statute. Thus murder, robbery, theft, &c. are all laid in this form, though in our statute books we have a variety of acts applicable to these crimes. Indeed, in judging of every indictment, it is not the major proposition only, but the subsumption or minor proposition, and whole content of the indictment, that forms the charge. This it is that must be considered in the present case; and any one who reads this indictment, which specifies distinctly the kind of sedition charged, cannot seriously call it vague and general.

This supreme court, it is well known, is in no degree limited to the trial of crimes pointed out merely by statute, and defined and ascertained thereby. Statutory offences form only one part of their jurisdiction, and that a very limited one. Their powers at common law extend to every offence which common law or right reason declares to be a crime. No doubt, in these offences, which are the mere creatures of statute (such as those which arise from revenue law), their powers are limited, and must be regulated agreeable to the particular statute introducing the offence; and the indictment must be founded on such statute.

It often happens that a common law offence is with us punished also by a statute; in such cases it is competent to lay the indictment on the *common* and *statute* law; thus stealing from bleach-fields, &c. in these cases the prosecutor has it in his power to insist either upon the one or the other, and the Court determines accordingly.

Sedition is clearly a common law offence, mentioned even in the Scriptures, and in the civil law. The argument by the panel's counsel went to show that sedition was no common law offence, or, at least, that the statutes with regard to it did, in fact, abrogate the common law, and render it a mere creature of statute. This, however, is perfectly absurd, and a proposition untenable; the statutes, no doubt, punished it with more severity than the common law, but did not thereby take away the common law offence; on the contrary, I am glad that some of these statutes are repealed, in so far as by some of these statutes, capital punishment is taken away.

It is equally absurd to say, that it is necessary, to constitute sedition, that there be an actual *rising* or *commotion*. The endeavouring to excite commotion is held to be sedition, as appears from the whole tenor of an act of parliament.

The act 1584, c. 330, was omitted by the panel's counsel. This is none of the statutes against leasing-making, or affected by the act 1703. The offence here seems to be that mentioned in the act 1584; thereby made *treason*; will it be said that, because the Scots treason law had been by the act of queen Anne repealed, therefore this offence is entirely done away, and cannot be tried to the effect of inflicting a punishment less than death? *murder under trust*, theft by landed men, was treason by the Scots law; yet will it be said that these are no longer crimes because the Scots treason law is repealed? I know not whether this difference would be treason by the English law now; this I know, an offence which the Court can punish, and an offence different from leasing making cannot now to be sure, be punished as treason, but still punishable as a crime at *common law*.

The fact stated in the minor proposition here is highly aggravated and atrocious—different indeed from leasing making. [His lordship here commented upon various parts of the indictment.] He observed, that the

very title of the meeting showed it was intended to subvert the constitution. It is said to be for the purpose " of universal suffrage," &c. This is against the principles, not only of the British, but of every form of government.

As the offence here, therefore, is not leasing making, the act 1703, is entirely out of the question. But, supposing it was, the act 1703, authorizes transportation under the term banishment. It is admitted that, prior to 1703, the Court did, in a variety of instances, inflict transportation. The terms of the sentences then were " banish," either by sending abroad to a particular place, or by mere exclusion from the country; so that transportation was mentioned merely as the form of executing banishment.

The spirit as well as the words of the statute 1703, clearly empower transportation; the act meant merely to take away the capital punishment, leaving to the Court to inflict an arbitrary punishment, *secundum modum delicti*, less than death. Had the legislature meant to deprive them of the power of transporting, is it possible that they would have used the word " banishment," which, for many years before, had been understood as including transportation, and had been so used in the sentences of the supreme court? Further, nothing could be more absurd, than a simple sentence of banishment from Scotland, for an offence of this nature, committed, too, by persons who had come from England for that very purpose;—it would be merely sending them back to their place of residence: this would be no punishment, and ridiculous in itself.

The Court by transporting, do not execute a jurisdiction beyond their territory. The sentence is not a combination of banishment with imprisonment.—No doubt the person is in custody till he arrives at the place appointed. So far necessary this to explicate the sentence. But when he gets to the place, he is under a different law, and no certification is contained in the sentence, unless he return to Great Britain. Banishment is the expression used, down to the year 1754.

Lord *Swinton*.—The only question here is, the relevancy of the libel. Treason, sedition, and leasing-making, are three different offences. Bayne's definition of sedition (in his Compend. on the Criminal Law) is the best, and applies precisely to the case here. The convocation here intended to subvert the government, and it is these acts which tend to such a purpose, which Bayne defines to be sedition.

The act 1703, takes no notice of several acts of parliament that punish sedition, which are altogether independent of the acts against leasing making.

The sentences of this Court proved, that banishment is a general term, applicable either to the sending abroad, or merely excluding from Scotland. But banishment is never used *per se* in these sentences, but always accompanied with words expressible of the manner in which it is to be executed, as appears clearly from the different cases quoted by the solicitor general. No answer has been made to these cases by the Dean of faculty.

Lord *Dunsinnan*.—I have carefully considered the subject, and always was of the opinion of which I now am, which as it coincides entirely with that already given, I think it unnecessary to enlarge upon.

Lord *Abercrombie*.—In the opinion I am to deliver, I shall avoid repeating the observations already made by your lordships, in which I entirely concur.

We all know that the manners of a people cannot be stationary. New manners necessarily give birth to new crimes. In some countries doubts may arise in what way, and by what law such new crimes are to be punished,—whether they require a special enactment, or may be punished by the common law of the country. In Scotland no such doubt can arise, because the supreme criminal court here, always has been understood as possessed of an inherent and radical jurisdiction, to punish every offence that can be denominated a crime, upon the principles of sound reason and morality. This power of the Court was recognized, particularly in one case, and was fully argued and considered, viz. in the case of Thomas Gray, and others, in 1751, who were charged with *forcible abduction* and *marriage*, a crime not known in the statute law of Scotland. Here the lord advocate, as well as the counsel for the panel, admitted that there was no statute or precedent for this crime. But it was argued by the prosecutor, that there was an inherent jurisdiction in the Court to try the offence, and to punish it at common law;—while the counsel for the panel insisted, upon the principles of the law of England, that no punishment could follow. This plea, however, was over-ruled, and some of the panels were transported to the plantations for fourteen years.

Atrocious as that crime was, it fell infinitely short of that with which the present panel stands charged. But no man then, no lawyer ever said, that when the Court in the year 1751, transported these persons, they exceeded their powers, or acted illegally.

Suppose no statute, however, in our books, or any mention made of sedition, and that the first instance of it had occurred in November 1793, still this Court would have had power to take cognizance of it, and to inflict by common law the punishment of transportation.

But the law of Scotland has not been silent with regard to sedition; though I will say that it has not provided for such an aggravated degree of sedition as this case unhappily exhibits,—a species new in itself, in its tendency most pernicious, in its principle the most wicked.

The argument of the panel was, that all crimes, by the law of Scotland, *against the*

state, were so accurately defined by acts of parliament, that none were left to the cognizance of the common law. Now the reverse of this proposition is the truth. The statute law is rather too vague and indefinite with regard to such crimes. The act 1703 is proof of this, while it declares that the statutes therein mentioned, were too vague and too liable to be stretched, &c.; and the act of queen Anne, introducing the treason law of England, is also a proof of this. That law was introduced because it defined better than any other, the crime of treason.

The act 1703, does in no shape apply to the case before us. The crime here is very different indeed from leasing making. Had this case occurred, suppose in the year 1704, no lawyer would have dreamt that it was provided against by the act 1703, or that the statute in any shape applied to it. This offence would, unquestionably, have been then deemed treason, as it fell under the Scots treason acts. These being now repealed, it cannot be tried capitally as treason, but may as a high offence, by the common law, to the effect of subjecting to an arbitrary punishment. It is an abuse of terms, to say, that a conspiracy such as occurred here, was the crime provided against by the act 1703.

But supposing that this was leasing making, I have no doubt that transportation could be inflicted, under the act 1703; and my reasons are the same as those already given by the Court.

Lord Justice Clerk.—I never entertained the least doubt with regard to the point that has been now argued. Where a crime has been created by statute merely, it no doubt is the practice of this Court to libel on the statute. But sedition is no stationary crime. It is coeval with the existence of society itself; is cognizable by the common law of almost every state; indeed it is a crime which right reason as well as law, must concur in reprobating and punishing.

The constitution of this Court is such, that it has an inherent jurisdiction in the trial of such crimes, independent altogether of statutory enactments. This power has been recognized in a variety of instances.

As to the objection of the generality of the libel, I consider it as completely ill founded. I have thought that indictments are in common too special, nor is the prosecutor bound to make them so. The act of James 6th relative to art and part, shows that an indictment is completely relevant, though the special circumstances accompanying the commission of the crime, are not condescended on in the indictment.

In judging of the generality of a libel, the major proposition is not to be taken *per se*, but must be taken along with the subsumption. If the minor proposition is too general, then there may be a ground of complaint by the panel, but the minor proposition here is sufficiently special and accurate.

As to the punishment in this case, I agree with the panel, that the former cases decided cannot be a *res judicata* against him. In these to be sure no counsel appeared, but the Court considered well of their powers, and of the law of Scotland before they pronounced judgment. Had I thought afterwards these judgments wrong, that the Court had erred in point of law, or even that the matter was doubtful, I should, for one, have applied to his majesty for a mitigation of these punishments; but I never entertained but one opinion on the subject, which I formed with the utmost attention.

I agree that when the punishment of a crime is precisely ascertained by statute, and when that statute has excluded every other punishment, this Court cannot inflict a higher one. But I have always held it,—and every lawyer must be of the same mind,—to possess a common law jurisdiction to the effect of inflicting any punishment, according to the quality of the offence, less than death, for every crime the punishment of which is not, as above, specifically defined by statute.

The panel's argument was, that leasing-making and sedition were the same. This is by no means the case. Sedition is a crime of so generic and various a nature, that it could not be regulated by a particular statute, nor could nor ought a precise punishment to be annexed to it; it must be left to the discretion of the judge to ascertain the punishment,—a discretion which belongs to this Court, and has for ages been recognized as an inherent part of its jurisdiction.

Leasing making is not always sedition; it is in fact, properly, a species of verbal injury, and is treated and arranged by sir George Mackenzie as such. It consists in false, abusive, and injurious language, propagated with a view chiefly to personal injury; it may be committed without a seditious intention, though no doubt when directed against particular persons, the effect may be a commotion or rising of the people.

Sedition does not consist in words, or in a verbal injury, though words may afford evidence of, and be the instrument of sedition. The distinction of verbal and real sedition, has misled the counsel for the panel. Real sedition may be committed by forming a seditious conspiracy, though no actual overt act of violence is committed. If actual violence takes place, it then amounts to high treason. The convocation or conspiring here, amounts very nearly to high treason. The convention declares, "that nothing shall stop them but superior force."—Is this not a bold and daring avowal of resistance? Is this not a declaration of an intention at least of levying war against the king, in the sense of the statute of Edward 3d? I am clear therefore that the act 1703 has nothing to do with this case. But, suppose it had, it would have been equally clear, that under that statute the panel may be transported. Transportation is only a

mode of executing banishment by the common law of Scotland.

The presumption and construction of law is, that when a capital punishment is taken away, the Court have full power to inflict any arbitrary punishment less than death;—nor does the law of this country allow the supreme criminal court to be limited in the exercise of its jurisdiction by implication or inference, without an express enactment. Even the court of session, who have only an incidental, not a radical jurisdiction in crimes, can banish by transportation. There are instances of this, in the crime of forgery, to which that court is competent, as appears from the act of sederunt.

The tenor of the sentences of this court demonstrates the clear meaning of the term "*banishment*," as comprehending not only simple exclusion from the country, but the sending beyond seas.—A Scots law term must be construed according to the Scots law sense; and what can more completely demonstrate the meaning of a legal term, than the uniform usage and practice of the supreme court?

It has been said, that by transporting we exercise a jurisdiction *extra territorium*; but this is a mere fallacy. The Court, to explicate their jurisdiction, no doubt detain the person of the convict till he is removed to the place appointed; this always has been the practice. When the convict, however, is brought to the place appointed, then the coercion and jurisdiction of this court ceases; we may send him to Botany Bay, but we cannot keep him there. No doubt he will become subject to the law of the place, which may perhaps detain him, in the same way as he would be liable to the law of any other country, had he been simply banished, or excluded, from Scotland; and, in both cases, he is liable to punishment, if he returns in defiance of his sentence.

The same argument of exercising jurisdiction *extra territorium* would equally apply to an act of parliament, authorizing *transportation* as to a sentence of a court of law: I shall only say, that when I pronounced judgment in the former cases, I considered that there there was no other adequate punishment for the offence than transportation,—none that was more fitting to the crime, or answered better the ends of public justice. Imprisonment I did not think adequate, either for *example* or *prevention*. It is no bar to seditious cabals. Banishment from Scotland I would have considered as a burlesque on public justice. To send back to the country from whence he came, to another part of the kingdom of Great Britain, a person who had purposely come down here to stir up *sedition* against the realm, would have been ludicrous and absurd, and a disgrace to the criminal justice of the country.

I have fixed, therefore, on the only punishment which, by the law and constitution of this country, by the usage and practice of your lordships, I thought in justice to the country, I could inflict, and, had I judged otherwise, I should not have acted agreeable to my conscience, or consistent with my duty to my country or my God.

The following interlocutor was then pronounced.

The lord justice clerk and lords commissioners of justiciary, having considered the criminal libel, raised and pursued at the instance of his majesty's advocate for his majesty's interest, against Charles Sinclair, panel, with the foregoing debate; they find the libel relevant to infer the pains of law; but allow the panel to prove all facts and circumstances that may tend to exculpate him, or alleviate his guilt; and remit the panel, with the libel as found relevant, to the knowledge of an assize.

(Signed) ROBERT MAC QUEEN, J.P.D.

Continued till the 24th of February, 1794.

24th February, 1794.

Continued till 10th March next.

10th March.

Continued till the 14th March.

14th March, 1794.

Intran.

Charles Sinclair, designed in preceding sederunts.

Mr. Robert Blair, his majesty's solicitor-general, represented, that on the part of the public prosecutor, he moved their lordships to desert the diet of the present libel *pro loco et tempore*.

The lord justice clerk, and the lords commissioners of justiciary, in respect of what is before represented, desert the diet against the said Charles Sinclair, panel, *pro loco et tempore*.

(Signed) ROBERT MAC QUEEN, J.P.D.

599. Proceedings on the Trial of JOSEPH GERRALD,* on an Indictment charging him with Sedition. Tried before the High Court of Justiciary at Edinburgh, on the 3rd, 10th, 13th and 14th of MARCH: 34 GEORGE III. A. D. 1794.

Monday, March 3d 1794.

THE members of the court of justiciary assembled precisely at ten o'clock, in the forenoon. Mr. Gerrald appeared, and placed himself at the bar.

His majesty's advocate, for his majesty's interest, having been, in the usual form, called against the panel,

Mr. *Gerrald* said, my lord, I understand I am authorized to demand that a list of my exculpatory witnesses be read out in Court before the trial proceeds.

Lord Justice Clerk.—The criminal libel must be read first,—that is the first thing to be done.

Lord Advocate.—Before your lordships proceed to reading the libel, I feel it my duty to tell the panel, that if he means to persevere in an application which he signified to me yesterday, by letter, the proper period for him to do it is at this moment, before the indictment is read.

Mr. *Gerrald.*—My lords, as I am totally ignorant of the law of this country, being a native of England, I applied to several gentlemen of the profession, to advocate my cause; they unanimously refused—in consequence of which, I wrote a line to the lord advocate, as he has stated, mentioning that I should certainly make an application to the Court to appoint me counsel. Your lordships very much lamented, that in former cases, counsel had not been applied for; and, though the Court are bound to act as counsel for the prisoner, yet the panel, no doubt, wishes to avail himself of every advantage that he can. I stand peculiarly circumstanced; because, not being a native of this country, and being ignorant of its laws, without an advocate, I should be deprived of the benefit of their benignant interpretation, as the public prosecutor will no doubt state the charge as strongly as he can on the part of the crown: I therefore offer it as a suggestion to your lordships consideration.

Lord Justice Clerk.—What do you say to this, my lord advocate?

Lord Advocate.—My lord, I do not see that there is any thing put to me by the panel; it seems to be an application to the Court: however, I will state, in a very few words, what occurs to me; and I wish that the panel should hear what I say, and that the gentlemen of the jury, and of the country at large, should know what I have to state.

My lords, while this British convention, or what I shall never cease to term it, a conspiracy against the constitution of this country, assembled for many days within this city, and when they had proceeded, by my information, to a length which called upon the officers of public justice to interfere, I had occasion to direct those steps which appeared necessary for an inquiry into the subject; and, upon the morning of the 5th of December, the ringleaders of this convention (and this panel one of them) were apprehended.

My lord, the necessary investigations took some time ere they were completed; but it was my habit to bring those who appeared to me the most guilty, to a fair trial before their country, as early as possible. The first person that I brought forward in the list was the man who appeared to be most guilty, I mean Skirving, who stood trial, in this court, upon the 6th of January;* and the indictment that I felt it necessary to bring next in order, was the charge against the panel now at the bar, which was served upon him in the month of December, and the day fixed for the 8th of January. The day after the libel was executed upon him, at his residence in Edinburgh, I received from him a letter, in which he appealed to my humanity as well as justice, that I should consent to a delay of his trial for a fortnight, that he might return to England, and settle the affairs of a family dependent upon him. I instantly acceded to the request, and gave him more than he asked; I gave him till the 27th of January; and it appears, that upon the evening of Friday the 24th of January, from his own account of the matter, he left London, which would have brought him into this city, a few hours, by the utmost possible expedition, a very few hours before his trial was to commence. By the accidental circumstance of a heavy fall of snow he was prevented from reaching it that morning. Your lordships and the jury know what passed upon that occasion. I then felt it my duty to bring before the Court for trial, the young man who sits at his right hand,* and he did not state any refusal to my brethren of the profession to plead,—as I trust they ever will do—every de-

* See the preceding cases.

* See his case, page 391 of this volume.

* Mr. Charles Sinclair. See the preceding case.

fence which the highest or the meanest criminal is entitled to state, at that bar. I cannot therefore perfectly credit that what Mr. Sinclair received should be denied to Mr. Gerrald. But, if it is so, considering that he sat this day fortnight, at the side of that person, and I indulged him again at his own request, telling him, that he need not attend last Monday, but that this precise day was the day on which I determined to go to trial with him; a fortnight afforded him surely opportunity enough to have applied to your lordship's justice; and every counsel at the bar would, I am sure, have appeared and stated for him every thing that it was competent for him to state. But at four o'clock yesterday, I received from him a letter, the purport of which he has now stated; and I should feel myself acting only in the proper and due execution of my duty, if I were to argue to your lordships to refuse that application. But there are circumstances which I know, and which I trust will enter into your lordships consideration in giving your opinion upon this application. I hope and trust that the administration of the criminal justice of this country, however calumniated, however aspersed, is able to stand the test in competition with the administration of the criminal justice of England, or of any country upon the face of this earth. And, late as he comes with his demand, although, perhaps in a few hours, I must leave this country to attend my public duty in London, that can be no objection; the conduct of the criminal justice of this country remains in abler hands than mine. I trust your lordships (without affording a precedent to other panels to come with an expectation of being listened to upon so late an application) will accede to his request, for these reasons; and to satisfy Mr. Gerrald, that if he has come to this country, a stranger to its laws, and if he has presumed to offend highly, as I charge that he has, that he has not only received that strict administration of justice in this country, which he would in his own, but that he has received that indulgence which calumny itself cannot reach.

Lord Justice Clerk.—The panel is certainly very late in his application; at the same time, in the circumstances of this case, I am not for cutting him short, however late he may be. I think he is right in making application for the assistance of counsel as a stranger to this country; and I do not see that he can be supposed to know the laws of this country. I think he is right, and I am, for my own part, for giving him counsel. What do your lordships say to it?

Lord *Henderland.*—I own it is my opinion that this panel, and every panel, whatever be the charge against him, should come to your lordship's bar prepared and assisted by counsel. It is very true, that the judges are counsel for the panel, to a certain degree, but their duty is limited; in the first place upon the relevancy of the indictment, to see that no charge shall be admitted against panel which does not necessarily and logically infer the crime; the next part of their duty is, to take care that no evidence shall be admitted but what is legal and unexceptionable; the third part of their duty generally falls upon the presiding judge to address the jury upon the evidence, as by act of parliament, and to state it to them fairly. If any error is committed, I dare say the Court would interfere: that has never been the case, and I hope never will, while your lordship sits as judge; but there are cases in which a counsel may be of great use to a man: arguments may be made use of, which might otherwise have escaped. I think he ought to be assisted by counsel; and therefore I am extremely willing that he should, though I think this gentleman has come exceedingly late indeed. I am not ready perhaps to inquire, because I cannot know what were his motives for being so late in his application; but I cannot suppose he could be ignorant of the right he had to apply for counsel. And I must regret too that my lord advocate is going to attend his duty in parliament, who has so well and ably conducted the other trials; and in whose humanity, as well as abilities, I think this country may place great confidence. I must regret that he is obliged to be absent: yet notwithstanding that, I agree with your lordship in desiring that this man should be assisted by counsel, and that he should suggest who are the gentlemen that he wishes to have, I think that is the proper way; the list of faculty is open to him, and I will venture to say, there is not a man in it but what is fit in proportion: some of them may be in experience more or less able, but there are none of them but what may be very well intrusted with his defence. However, in order to give him every indulgence, he shall have his choice; at the same time recommending to him not wantonly to interfere with the superior avocations of a gentleman at the bar,* whom the

* In order to ascertain whether he was the person here intended, I applied to my highly esteemed friend the honourable Henry Erskine, who at the time of this trial held the situation of dean of the faculty of advocates: I am happy to avail myself of his permission to present the reader with the following extract from his reply to my application:—

"You are right in supposing that I was the person alluded to by lord Henderland in Gerrald's trial: but I was not one of the counsel to whom Gerrald applied, and who, he says, unanimously refused to undertake his defence. Had he wished my assistance, I should certainly have appeared for him, however inconvenient it might have been to me from the multiplicity of business in which I was in those days involved, for I ever felt (as the lord justice clerk well expresses it) *that no gentleman ought to refuse to defend a panel, whatever be the nature of his crime.* I should,

Court are not induced to trouble with impositions upon this head, from a panel.

Lord Justice Clerk.—Have you an agent.

Mr. *Gerrald.*—No, my lord; I have applied to two or three, and they have refused. I applied to a gentleman to whom I have not had the honour of being long known, but who knows me and my connexions extremely well, and who would undertake my cause, but for reasons which I am not authorized to tell in court. Mr. Laing is the only gentleman whose refusal I have authority to mention. The two gentlemen I would wish to employ, are the dean of faculty and Mr. Laing, with your lordships approbation.

Lord Justice Clerk.—If the dean of faculty does not object; but if he should, he is a gentleman whose attendance we cannot compel.

Mr. *Gerrald.*—If the dean should refuse, I shall prefer Mr. Fletcher.

Lord Justice Clerk.—We shall just now name Mr. Fletcher and Mr. Laing.

Lord *Eskgrove.*—I think you had better suggest one or two more, in case of any accident, that they cannot attend.

Mr. *Gerrald.*—I feel extremely the indelicacy, and would rather be deprived of the benefit of counsel, than drag any gentleman into an office, the duties of which he would reluctantly fulfil.

Lord Justice Clerk.—Even without the interference of the Court, I think no gentleman ought to refuse to defend a panel, whatever the nature of his crime might be. Now, name another.

Mr. *Gerrald.*—I have the honour of being know to Mr. Gillies.

Lord Justice Clerk.—Will you name a fourth.

Mr. *Gerrald.*—No, my lord; they will be quite sufficient.

Lord Justice Clerk.—Now, name an agent.

Mr. *Gerrald.*—I will leave it to your lordships, if you please.

Lord Justice Clerk.—No, you must name one yourself. Name two, and you will be sure of one or other.

Mr. *Gerrald.*—Mr. James Gibson, and Mr. James Campbell.

Lord Justice Clerk.—Now, I am sure you must be conscious that you have had all kinds of indulgence; but you must be ready next Monday.

Mr. *Gerrald.*—As to myself I am perfectly ready to go on now with the defence which I originally intended to have made.

Monday, March 10, 1794.

The Court met agreeable to adjournment, when Mr. Gerrald again placed himself at the bar. The assize being called over, and the lord justice clerk having desired him to listen to his indictment,

Mr. *Gerrald* said, my lords, I feel myself under the painful necessity of objecting to the lord justice clerk sitting upon that bench, upon this plea, that his lordship has deviated from the strict line of his duty, in prejudging that cause in which my fortune and my fame which is more precious to me than life, is actually concerned. I beg, therefore, that that [holding a paper in his hand] may be made a minute of this court. My lords, I am totally ignorant of the mode of conducting the evidence, and therefore shall rely upon your lordships candour for setting me right when I am wrong; and I understand your lordships are counsel for the prisoner, equally with those appointed by the bench.

Lord *Henderland.*—You must read it.

[Mr. Gerrald then read as follows:]

"Joseph Gerrald stated, that before proceeding to trial upon the criminal letters raised against him, he must take the liberty of declining the lord justice clerk, as having disqualified himself from judging in the present question, by having prejudged it. In order to show that this objection was not made at random, Joseph Gerrald offered to prove that the lord justice clerk, had prejudged the cause of every person who had been a member of that assembly calling itself the British Convention; inasmuch as he had asserted, in the house of James Rochead, of Inverleith, that 'the 'members of the British Convention deserved 'transportation for fourteen years, and even 'public whipping;' and that, when it was objected by a person present in company, that the people would not patiently endure the inflicting of that punishment upon the members of the British Convention, the said

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at the same time, have qualified my compliance with this condition,—that the conduct of the defence should be left entirely to me, knowing, as I did, that if he spoke for himself, he would avow principles and views which would supply the counsel for the crown with the only thing they wanted to make out their case,—THE CRIMINAL INTENTION.

"When Sinclair, who was previously brought to trial, applied to me, I consented to defend him, *on the above condition only.* He agreed. The pleadings on the relevancy took place; and the result was, that the lord advocate abandoned the prosecution.

"When Mr. Muir made a similar application, I gave him the same answer, stating that I could not in justice to him, nor consistently with my own reputation, act otherwise. He declined my assistance on these terms. He pleaded his own cause;—and you know the result.

"I wish you to be acquainted with these facts, not only as of some importance in the history of these trials, but that the public may see from what it arose, that my name appears but once in the record of these important cases, which otherwise might be imputed to very different causes."

lord justice clerk replied 'that the mob would 'be the better for the spilling of a little 'blood.'* I pray that this may be made a minute of the court.

[The lord justice clerk then left the chair, which was taken by lord Henderland].

Lord *Henderland.*—Have you subscribed it?

Mr. *Gerrald.*—No, my lord, I did not know that that was necessary. [Subscribes it].

Lord *Henderland.*—Do you wish to be farther heard upon it?

Mr. *Gerrald.*—I desire to have the matters alleged substantiated by evidence.

Lord *Henderland.*—Your lordships have heard the minute of the court, concerning that respectable judge who has the honour to preside as vice-president, in this court in the absence of the lord justice general. My lords, it is a thing perfectly new in the annals of this court; nor is there one instance to be found in our records upon the books of adjournal.

My lords, you have heard the nature of the complaint, which is as extraordinary as it is unprecedented; and it will become you, my lords, well to weigh what is the import, and what ought to be the legal effect, of such an objection offered, in such extraordinary circumstances, and at so early a period as this. You had it in a different form indeed, in the case of Margarot, but you will consider it in this new form, in this new guise which it has assumed; you will consider how far it is important in its nature, or how far it is the same that was offered in the case of Margarot; you are not prohibited from forming a different judgment upon it now from what you might have done then; but I thought it necessary to bring these matters under your lordships view, before you proceed to give your opinion upon this so unprecedented and extraordinary a minute. It is now submitted to your consideration.

Lord *Eskgrove.*—My lords, this objection which comes before your lordships is a novelty in many respects; and I do not think this panel at this bar is well advised in making it: what could be his motive for it I cannot perceive. He has the happiness of being tried before one of the ablest judges that ever sat in this court; but he is to do as he thinks fit. I am sure he can obtain no benefit if he gains the end he has in view; and therefore I cannot perceive his motive, unless it is an inclination, as far as he can, to throw an indignity upon this court.

As to the objection, I think there is no validity in it. In a former case, an attempt was made to start the same objection, by the person then to be tried. I do not observe that this gentleman says his name was ever mentioned in that conversation, or that any thing was said of him individually; but he says it was an expression in common conversation, importing that honourable judge's opinion, that the members of the British Convention should be transported for fourteen years, and even publicly whipped. I do not conceive what interest this gentleman has in it; he has not yet acknowledged himself a member of that convention. My lord, one man's conduct may be different from another's in that assembly. As to the expression, it could only import hypothetically, that, if that convention was guilty of the crimes stated against them, of that attempt to overthrow the constitution of their country, to create rebellion and insurrection in the country, then the punishment adapted to such an offence was, in his opinion, transportation and public whipping. What is there in that more than in the opinions given in this court already, in causes of this kind? My lords, it has been said by all your lordships, in this court, that if the persons who have been convicted had been brought to trial before the alteration of the treason law by the union, they would not have been tried as persons liable to arbitrary punishment, but recognizable as high treason; and the person at the bar under that accusation would have been tried for his life, and on conviction would have suffered the pains of death and forfeiture. If therefore by an alteration of the criminal law of the land, this crime which goes to destroy the constitution of the country, is made an arbitrary punishment, that punishment must be the highest arbitrary punishment that can be inflicted; and therefore I see nothing in that opinion which imports more than your lordships have all said in this court. I think it was nothing more than a general opinion, given upon the nature of the offence, as charged, that it was a convention of persons meeting to overturn the happy constitution of this country; and giving his opinion that such an offence merited that punishment. I am sure that can be no disqualification from sitting in this court, where the same opinion has been given by all your lordships.

It is stated here, that it was objected by a person present in company, that the mob would not patiently endure the infliction of that punishment. I do not know what could be the motive of any person to make such an observation if they had any reason to believe such a thing; for my part, I think it is a most erroneous observation; for I have a better opinion of the mob as it is called, the people of this country, than to think that they are capable of associating for acts of violence in defiance of the laws. I think better of the people of this country, than that they would meet together for the purpose of stirring up insurrection and violence. But, my lord, it is no more than saying this, that a mob, if they should be so ill advised as to break out into an insurrection, with an intention to overthrow the constitution, would not merit compassion, in case the magistrates should be

* See Margarot's trial p. 672. of this volume.

reduced to the disagreeable necessity of resisting force by force; and that is an observation which I dare say, has been made by a thousand people besides his lordship; and it cannot be supposed that that was to prejudicate the trial of this gentleman, who will, by his lordships and by the Court, be treated as an innocent man, till he is found guilty. My lord, to say that is prejudicating him, because he spoke of a punishment with one exception (a corporal punishment) which had been inflicted upon persons who had before been convicted, is carrying the objection beyond all degree of reason; and I can ascribe it to nothing but malevolence and desperation.

Mr. *Gerrald.*—My lord, I come here not to be the object of personal abuse, but to meet the justice of my country; had I been actuated by such motives, I am sure I should never have returned to this country.

Lord *Henderland.*—I desire you will behave as becomes a man before this high court; I will not suffer this court to be insulted.

Mr. *Gerrald.*—My lord, far be it from me to insult this court—

Lord *Henderland.*—Be silent, sir.

Mr. *Gerrald.*—My lord—

Lord *Henderland.*—I desire you will be silent, sir.

Mr. *Gerrald.*—My lord, I am sure that my coming to this country shows that I was actuated by the purest principles of justice.

Lord *Eskgrove.*—If I have said any thing wrong, I will very readily retract what I have said; but I was making an apology for this objection, that I cannot ascribe it to a solid objection of counsel, none of whom have stood up to support it. I meant nothing more by what I was saying; I am very sorry for the expression I made use of, and ask the gentleman's pardon; but, upon the whole, I think the objection an irrelevant one.

Lord *Swinton.*—My lord, an objection of this kind, coming from any other man, I should consider as a very high insult upon the dignity of this court; but coming from him, standing in the peculiar situation in which he now stands at the bar, charged with a crime of little less than treason, the insolence of his objection is swallowed up in the atrocity of his crime. He has objected against a most worthy and respectable judge, that being in a public company at Inverleith, he said that the members of the British Convention should be whipped and transported; and upon a lady* saying the mob would not suffer it, his lordship is said to have answered, that in that case they would deserve to lose a little blood. It appears to me, that there is not the smallest relevancy in this objection. There is no doubt but there are reasons why a judge may be declined according to an act of parliament: the law is, that if a judge has any interest in the cause, that he can either win or lose by it; if there is capital enmity between a judge and the party, that might be a good reason for his being declined.

Mr. *Gerrald.*—My lord—

Lord *Henderland.*—Once for all, sir, I must inform you that you are not entitled to interrupt the judges; if you have any thing to observe, after any one of them has done, you will be permitted to speak; but I desire that you will behave with that decency which becomes you.

Mr. *Gerrald.*—My lord, I respect the laws of my country, and I should not respect myself if I did not; which I flatter myself I shall always do: for, I hope I never shall do any thing which can constitute a ground of self-degradation in my own opinion: but I spoke to his lordship, because I understood his lordship had addressed me, and that was the only reason of my speaking.

Lord *Swinton.*—My lord, I say there is no relevancy in this objection. If any judge here shall have enmity against any man whatever, standing at that bar, it might be a good reason for his being declined; but in this case it would be absurd. I never heard of this man's name in my life, before he came into this country, and I dare say his lordship never did; and what interest he can have except that of compassion for a man in that unfortunate situation, I cannot tell; and I appeal to the feelings of every man; I say it is impossible.

My lord, there is not the smallest ground to suppose that this man was prejudicated by that conversation; and therefore I think the objection is irrelevant.

Lord *Dunsinnan.*—My lords, this objection is new, and not a little extraordinary; it very much surprised me. I shall enter into no observations upon his conduct; and I think your lordships ought to pay no attention to it, either in one shape or another.

Lord *Abercrombie.*—My lords, as to the objection made by this panel—if a judge is guilty of a breach of the sacred trust reposed in him, he is amenable to the laws of his country, and may be impeached for that offence; he may be punished for it, and the law of this country has provided against it. But, my lord, that is not the shape in which this objection comes before you; it comes in the shape of a disqualification. Now, my lords, I know of no circumstances whatever which can disqualify a judge from sitting to discharge his duty, except those in the act of parliament. But, my lord, this objection applies equally to every judge who sits here. Sure I am, that upon every occasion when I have had an opportunity of giving my opinion

* In the objection offered by Gerrald, the sex of the person whose observation called forth the sentiment alleged to have been uttered by the lord justice clerk, is not mentioned. Margarot, however, in his interrogatories to the lord justice clerk, assigns the observation to a *lady*. See Margarot's case, *antè* p. 672.

upon the subject, I have never hesitated to say that I considered the British convention as a conspiracy of a most dangerous and of a most criminal nature.

My lord, with regard to the unhappy man at the bar, there is not a doubt that the presumption of law is in his favour; he is presumed to be innocent of the charges laid against him, till he is found guilty by a verdict of his country. But I have no hesitation in saying now, in the presence of that man, in the presence of his counsel, and in the presence of this audience, and of your lordships, that if he should be convicted of the crime charged against him in this indictment, I shall say that even fourteen years transportation is too slight a punishment for an offence of such magnitude. My lord, in the case of Margarot, I had a doubt, but that doubt was whether fourteen years transportation was not too slight a punishment for the offence, aggravated as it was by a variety of circumstances, and in particular, by the very improper and indecent conduct of that man to the Court in the course of his trial; which, for his own sake, I hope the panel now at the bar will not do.

Lord *Henderland*.—Your lordships have delivered your opinions so fully, and placed this question in so many different points of view, and expressed yourselves in so much better language than I can do, that it would be highly improper in me to go over the same grounds again; I shall only say that I perfectly agree in the opinion of the Court, that this objection is not well founded.

My lords, it appears to have been a transient conversation, with respect to the crime of sedition, and the punishment due to it: but is that to be the ground of declining a judge? I appeal to the feelings of any man who has conversed upon this subject; I appeal to the feelings of every juryman who has tried these cases; I appeal to the feelings of every juryman who will try these cases; would he think himself bound in the smallest degree by such a conversation? would he think the case prejudged one iota? would he think himself hindered from examining the evidence, or from weighing the arguments with the greatest fairness, and with the utmost accuracy? I am sure he would not. To say that these words shall be held by this Court as a prejudication of any judge or juryman, (for I know not how far the objection may go) might lead to the most extensive, and the most dangerous consequences, for ought I know; I do not say it is so, but it might go even to the exclusion of all trials.

My lords, taking it in this point of view, the words said to be expressed in the manner in which they were expressed, and the occasion upon which they were expressed, must all go together; and it is admitted they are so far fairly told you. It is not said that this was a judicial opinion given by this learned judge, and therefore was not any thing like a prejudication of what he might do in this court; and we are to judge, whether by fair inference it ought to be held so, whether by consulting the common sense of all mankind, for that is the test of all criminality. And here, my lord, a respectable judge, an honour to his profession and abilities, whom I know to be a man of the highest honour, and the strictest integrity, is to be tried before us; for we are his jury, and we are called upon by our great oaths, as judges, and laying our hands upon our hearts, to say, that this respectable judge, by what is here alleged, is to be rendered incapable of sitting in this chair—to be degraded from his office, and held unfit to judge in the most important trials in this country; where his abilities, steadiness, and knowledge in the law, are most required—I cannot go such a length—I think it is contrary to law; and that therefore the objection is irrelevant.

[The objection was repelled.]

[Lord Henderland then left the chair, and lord justice clerk resumed it.]

Lord Justice Clerk.—Joseph Gerrald, attend to the criminal libel that is to be read against you.

[The indictment was then read by the clerk of the court, of which the following is a true copy;—

George, &c. Whereas it is humbly meant and complained to us, by our right trusty Robert Dundas, esq. of Arniston, our advocate for our interest upon Joseph Gerrald of Hart-street, Bloomsbury-square, London, and, presently or lately, residing in the Black Bull Inn, head of Leith-walk, in the parish of St. Cuthbert's and shire of Edinburgh; that, by the laws of this, and all other well-governed realms, sedition is a crime of an heinous nature, and severely punishable: yet true it is, and of verity, that the said Joseph Gerrald, above complained upon, has presumed to commit, and is guilty actor, or art and part, of the foresaid crime; in so far as, a number of seditious and ill-disposed persons having illegally assembled, at Edinburgh, during the months of October, November, and December, 1793, the said Joseph Gerrald, above complained upon, did come into this country, for the purpose of joining and assisting these persons, and became a member of their illegal and seditious association and meeting; which illegal and seditious association and meeting, at first assembled under the designation of a "General Convention of the Friends of the People," but thereafter, presumptuously and seditiously, assumed the name of "The British Convention of the Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments;" and did in the whole form and manner of their procedure, as well as in the principles they avowed and propagated, clearly and unequivocally demonstrate that their purposes were of the most dange-

rous and destructive tendency, hostile to the peace and happiness, and tending to subvert the constitution of this realm; imitating, in the form and tenor of their proceedings, the convention of France, the public and avowed enemies of this country, and with whom Great Britain then was, and still is, at war; the members calling each other, at their meetings, by the name Citizen; dividing themselves into sections; receiving reports from said sections; some of which bear date, "Liberty Court," "Liberty Stairs," "Liberty Hall," "First year of the British Convention, one and indivisible;" and some of which have *vive la convention* prefixed to them, and end with *ça ira;* instituting primary societies, provincial assemblies, and departments; appointing committees of various kinds, such as, of organization, of instructions, of finance, and of secrecy; denominating their meetings sittings; granting honors of sittings; making honourable mention in their minutes of patriotic donations; and inscribing their minutes, with the first year of the British convention: and moreover, the members of the said seditious association, under the designations aforesaid, did, at times and place abovementioned, and particularly in a room or mason lodge in Blackfriar's Wynd, in the city of Edinburgh aforesaid, hold various seditious and illegal meetings, and did in said meetings, wickedly and feloniously, make harangues and speeches, as well as motions and resolutions, of a seditious tendency; the substance of all which was, under their authority, at least with their knowledge and approbation, not only minuted, but published in a newspaper, published at Edinburgh, intituled "The Edinburgh Gazetteer," and through that medium circulated among the lieges. And the said Joseph Gerrald, not only approved of and concurred in these wicked and seditious motions and resolutions, but did wickedly and feloniously make harangues and speeches, and take an active part in all the illegal proceedings of the said association, was frequently named, and acted as a member of their committees, and as president or chairman of the association. And particularly, upon Thursday the 21st day of November 1793, or one or other of the days of that month, or of the months aforesaid, the said Joseph Gerrald, did wickedly and feloniously address the said illegal and seditious meeting, when assembled and resolved into a committee, for the purpose of considering of a plan of union, in a speech of the following, or similar import.

"Whatever difference of opinion may arise within these walls, I suppose we have all one common object in view: we all live under the same form of government, have the same grievances to complain of, and seek the same redress. It was justly observed by citizen Callender, that, soon after the union of the crowns of England and Scotland, the people of both countries were deprived of some of their most valuable privileges. It was from that period that the greatest encroachments began to be made on public liberty; but, if that union has operated to rob us of our rights, let it be the object of the present one to regain them. If the event exists for our shame, as it has existed for our chastisement, let it also exist for our instruction.

"Some doubts have been introduced respecting our right to universal suffrage. I apprehend that we may justly claim it as our inheritance from nature; but we can with confidence, because we can with truth, appeal to antiquity for our title to this right; and it will be found to have been exercised by our ancestors in its fullest extent. It must be confessed, however, that, in the early periods of our history, there existed a body of men called slaves: happily, this distinction does not exist in our days; and, if there are political slaves, it is time that they should exist no longer.

"In establishing the right of universal suffrage, the convention may perhaps give offence to the satellites of despotism; but, while we can establish our demand on the immutable principles of justice, we may at the same time prove, that it is perfectly agreeable to the spirit of our constitution.

"Under the Saxon government, the people met frequently in the different divisions of the country, in assemblies called Folkmotes. There they deliberated; there every man had a voice in choosing his representatives; the concurrence of the people was necessary to the administration of government; and they obeyed the laws which themselves had made. The king of England used to sit in the folkmote; and, I believe, it would be more to his own advantage if he sat there now.

"In the progress of time, however, great deviations have been made from the original purity of the constitution, and the national representation has been supposed to be sometimes influenced by motives not altogether congenial to the happiness of the people. Human nature is so constituted, that every man is inclined to pursue his own individual interest in preference to that of others. If you appoint a man to act as your agent, and make his situation such that he has every temptation to betray you without incurring the danger of being called to an account, the probability is, that he will sacrifice your interests to his own. It is therefore that a free suffrage of the people is what every man ought to desire, as that alone can make the interests of the representative and his constituent the same. The great art of government, I apprehend, is this, that all should be governed by all; but unhappy is the country where men are called upon by every interest to act in opposition to their duty

"Much, of late, has been said about meetings of mobs. I apprehend that no meeting of the people can be called a mob, if their deliberations be directed towards the public

good; but if men meet for an opposite purpose, for promoting the misery or the destruction of the human race, though they should sit with crowns on their heads and sceptres in their hands, they are truly a mob.

"Were all mankind to assemble in public meetings, one of two things must follow; either they will behave properly or improperly; if properly, their meeting will tend to good; if improperly, it carries its own cure along with it. The people will be soon brought into a better method by a sense of self-preservation, by which they will correct the errors into which they have fallen.

"It may occur, that the voice of the people may be wrong when their understandings are perverted by priestcraft, or darkened by political superstition, like the voice once heard in Jerusalem, of crucify him! crucify him! when that nefarious deed was perpetrated, at which the sun hid his head in darkness and in blood. But, were the tyrants of the earth as solicitous to enlighten as they are to punish their unfortunate subjects; were governments to instruct the poor, instead of hanging up their bodies on gibbets; the voice of the people would then be the voice of God.

"By the Norman conquest, or rather robbery (for that transaction, like every other, is to be considered by its consequences), the right of voting was greatly curtailed; but surely we can, with great propriety, meet to petition parliament for the restoration of the right of universal suffrage; a right which is so necessary to the just administration of government; for, if any man comes and tells me that I must pay a tax to which I have never consented, neither by myself nor my representative, what am I to think of the legality of his claim? Whenever money is taken from the people by a military power, or by any other authority not delegated by themselves, call that government what you will, it is a government of force—it is the sword which governs. The right, then, of universal suffrage, of which we have been so unfortunately and unjustly deprived, I repeat, is not only a natural right, but also an inherent principle of the constitution. In the early periods, every man had a vote for his representative. With some little variation, the practice continued for ages; it underwent considerable alterations at the conquest; a period at which the goodly fabric of Anglo-Saxon government was undermined, and the structure of tyranny erected in its stead.

"It has been observed, that the Revolution of 1688 does not produce the advantages which might have been expected from such an event. It is true that, at the Revolution, universal suffrage was not dispensed to the people with that liberality which it ought to have been; but still the present form of government, in my opinion, no more resembles the revolution, than a dead putrid carcase does a living body.

"The principal advantage of the Revolution was, that it made the chief magistrate responsible for his trust, by establishing the right of the people to alter the line of succession to the throne. The House of Hanover, if they are wise, will not be averse to revolution principles; for it is in consequence of those principles that the present monarch reigns in Britain. A worthy member, I believe with the best of intentions, called another to order, and said he was going too far:—no man, I apprehend, goes too far, unless he goes beyond the rule of right—unless he violates the truth. If the members who compose a government abuse their trust, may they not be resisted? And, if there existed a right in any preceding generation to amend the constitution, can it be said that that right does not equally belong to the present?

"Let us then endeavour to instruct the people in their rights, and to inform them of our views and our intentions; they will come and sign our petitions, and we shall be enabled to send them up subscribed by a majority of the people. The voice of the people will be heard, whenever it is spoken in the language of truth, and by a number so respectable as to command attention; and it will soon have that respectability, if we have reason on our side.

"As to the manner in which the union is to be formed, we may find precedents for it in our early history; but the first thing to be done, is to enlighten the people;—endeavour to diffuse the principle on which you act. When you have got a sufficient number in every district, establish a correspondence among them;—show them the necessity of uniting in the common plan of co-operation; then the people, assembled in the different departments of the country, will resemble the ancient folkmotes, and will speak in language too reasonable to be confuted, and too peremptory to be refused.

"The manner in which they should organize themselves is of very important consideration; and they ought to be particularly careful what persons they choose for delegates to the next convention: let them be plain men, such as I see here;—none who have ever breathed the pestilential air of a court—or bowed the knee to aristocracy. Let us renounce all attachment to parties, and be no more deceived by the pretended patriotism of the great. During the American war, reformers and patriots sprung up like mushrooms, without any diminution of public burthens. Like mushrooms they were short-lived; for they sprung from a soil of dung, a hot-bed of corruption. Pitt has succeeded to Fox, and Fox to Pitt, without any reform being obtained; but let us no longer put faith in such men, unless they bring forward a reform founded on annual parliaments and universal suffrage:—that only is the kind of reform which will satisfy the people, and which they will never cease to claim as their due. Depend

upon it, whenever the leaders of parties see that the people are determined upon having their rights, they will not only endeavour to swim along the stream, but will strive to direct its course. Trust them not—they did not come forward in the hour of public danger;—why then should they be trusted, when they seek your favour only for personal convenience?

"The city of York has been proposed as a proper and centrical place for the meeting of next convention; but I can assure you that city is the seat of a proud aristocracy, the seat of an archbishop; however, I would not object to going there: as the saviour of the world was often found in the company of sinners, let us go there for the same gracious purpose, to convert to repentance. The borders of this country and England were mentioned by another member, and I should rather prefer some place there; for we should have this pleasing reflection, that we meet for promoting philanthropy and peace, on the ground which had been often drenched with the blood of our ancestors. Let us then, fellow citizens, unite heart and hand to bury the hatchet of natural antipathy, which the wicked policy of courts once instigated us to wield. Let us brighten the chain of national friendship. Let there be no other wish, either among Scots or English, than to obtain freedom, and no other rivalship, than who shall best deserve it."

Further, at a meeting of the said association, upon the 26th day of the said month of November 1793, or on some one or other of the days of that month, or of the months aforesaid, within the room or mason-lodge aforesaid, Alexander Callender, one of the members, having made a motion of the following or similar tenor, "That in case the minister, or any other member of either House of parliament, bring forward a motion for leave to bring in a convention bill, such as has passed in Ireland, to prevent the people from meeting according to their just rights by the Revolution, the same motion shall be notice to the delegates to meet in convention, to assert their rights;" the said motion was made the subject of discussion in the said meeting, on the 27th day of the said month, or on one or other of the days of that month, or the months aforesaid, when sundry amendments, of a wicked and seditious tendency were proposed; and the said motion, with the amendments, having been, by the said meeting, referred to some of the members thereof as a committee, to draw up a motion from the whole, Charles Sinclair, one of the members of the said committee, did, upon the 28th day of the said month of November, or on one or other of the days of that month, or of the months aforesaid, read to the said association or meeting, when assembled within the room or mason-lodge aforesaid, the amendments upon the said motion, as agreed on by him and the committee aforesaid; when the said association or meeting did wickedly and feloniously, then and there, all the members standing on their feet, solemnly and unanimously come to a resolution of the following import or tenor:

"That this convention, considering the calamitous consequences of any act of the legislature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our own acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country, and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people, and annual election, until compelled to desist by superior force.

"And we do resolve,

"That the first notice given for the introduction of a convention bill, or any bill of a similar tendency to that passed in Ireland, in the last session of their parliament;

"Or any bill for the suspension of the Habeas Corpus act, or the act of preventing wrongous imprisonment, and against undue delays in trials in North Britain;

"Or in case of an invasion;

"Or the admission of any foreign troops whatsoever into Great Britain or Ireland; all, or any one, of these calamitous circumstances, shall be a signal to the different delegates to repair to such place as the secret committee of this convention shall appoint; and the first seven members shall have power to declare the sittings permanent; and twenty-one shall constitute a convention, and proceed to business.

"The convention doth therefore resolve, That each delegate, immediately on his return home, do convene his constituents, and explain to them the necessity of electing a delegate, or delegates, and of establishing a fund without delay, against any of these emergencies, for his or their expense; and that they do instruct the said delegate, or delegates, to hold themselves ready to depart at one hour's warning."

Which seditious resolution the said Joseph Gerrald not only approved of, but immediately on its being so agreed to and passed, did, on the day, and within the place aforesaid, wickedly and feloniously address the said meeting or association, in a speech of the following or similar import:

"I rise to congratulate the convention on the adoption of this resolution, not only on the propriety of the measure itself, but on that unanimity and solemnity with which it has passed.

"I have not been able to procure a copy of the iniquitous act which has excited such abhorrence; but I have here the heads of the bill in the speech of Mr. Grattan, the man who, while he spoke against the bill, at the same time betrayed the liberties of his country. This bill, commonly called the convention bill, which passed in the last session of the parliament of Ireland, and which is the prototype of what may be attempted in Britain, breathes such a spirit of cruelty and oppression, that if tyranny were to be personified, it could not speak in language more insulting to the feelings of mankind.

"By the first head the delegates of the people are not allowed to meet to petition parliament. Surely despotism could not be more strongly expressed even in Turkey. There every bashaw listens to the petitions of his trembling slaves; yet that privilege is denied to the people of Ireland. But it has been said, to use a common expression, this bill was first passed in Ireland to feel the pulse of the people of Britain, that our rulers might know if it beat high with indignation, or if the blood run coldly in our veins; and we are willing to bow our necks to the yoke, and suffer in fear and in silence.

"In the second head, they are forbidden to meet for the purpose of asking the redress of grievances. Good God! What is government instituted for, if it is not for the redress of grievances? I had thought that in the most despotic government the people were permitted to utter their complaints, and beg to be relieved of their sufferings; but, at the close of the 18th century, we find this last indulgence to slaves denied to a part of the British empire. Our government boasts that it is the best in the world; but it is not in Ireland that we are to look for its excellencies. Whenever a government tells the people that they must not petition, that government is tyranny; and whatever you may be told of its acts of parliament in favour of liberty, these acts of parliament are set aside; they are mere pieces of parchment, and of no more value.

"The third head makes it a capital offence to consider of any public concern. Now, to make a road, or build a bridge, are public concerns; and of course the people of Ireland cannot meet on business of that nature, without making themselves liable to the penalty of this law.

"Though I could not get a copy of this bill, the heads, which I have read, are sufficiently explanatory of its detestable principles; and I hope the measure which has passed this night will convince the minister, that we are determined to guard against every attempt that may be made to deprive us of our rights; and though by some it may be thought a bold, by some a daring measure, yet it will be found the best for securing the peace of our country; for if such a law were suffered to pass, if men were not allowed to utter their complaints, a number of fierce and rancorous passions would arise, and we would seek to appeal to that last terrible decision, the event of which is uncertain, but which God and nature allows.

"If the servility of the people had been less; if they had dared to meet, and, in place of murmuring, to have told their rulers that there was danger in seeking to deprive them of their liberties, we would not have had to adopt this resolution to-night; but when I saw the calm deliberate countenances of all present, and the solemn manner in which it was passed, I was convinced that it would not only be a resolution of words, but a rule of action."

And further, upon the said 28th day of November, or one or other of the days of that month, or months aforesaid, and within the room or mason-lodge aforesaid, after the foresaid resolution had been so passed, and the foresaid speech so made by the said Joseph Gerrald, a motion having been made in the said meeting, in the following words, or in words of a similar import and tendency: "That a secret committee of three and the secretary be appointed to determine the place where such convention of emergency shall meet: that such place shall remain a secret with them and with the secretary of this convention: and that each delegate shall, at the breaking up of the present session, be entrusted with a sealed letter, containing the name of the place of meeting: this letter shall be delivered unopened to his constituents; the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state, until the period shall arrive at which it shall be deemed necessary for the delegates to set out;" the said meeting did wickedly and seditiously unanimously approve of the same. And at a subsequent meeting, upon the 4th day of December, 1793, or one or other of the days of that month, or months aforesaid, and wit in the said room or mason-lodge aforesaid, it having been moved by Maurice Margarot, one of the members of the said meeting, "That the moment of any illegal dispersion of the present convention, shall be considered as a summons to the delegates to repair to the place of meeting, appointed for the convention of emergency, by the secret committee; and that the secret committee be instructed to proceed without delay to fix the place of meeting;" the said meeting did wickedly and seditiously, "unanimously resolve the same, and appointed the secret committee to proceed as desired." And further, on Friday the 6th day of December, 1793, or upon one or other of the days of that month, or of the months aforesaid, the said illegal association or meeting having again assembled in a room or work-shop belonging to, or possessed by, John Laing, wright, situated in lady Lawson's yard, south side of Crosscauseway, in the parish of St. Cuthbert's and shire of Edinburgh,

Harry Davidson, esq. sheriff-substitute of Edinburgh, having, in discharge of his duty, repaired to the said room or work-shop, in order to disperse the said illegal meeting, the said Joseph Gerrald, with his associates, did then and there resist the said sheriff-substitute, and refused to disperse without being compelled; and so much so, that after the said sheriff-substitute had entered the room, and desired them to disperse, the said Joseph Gerrald wickedly and feloniously exclaimed, "The rights of Britons are violated by this illegal interruption of our peaceful meeting. It is force, not reason, with which our enemies assail us. I defy them to assign one reason against the lawfulness of our meetings; but if they thirst after our blood, they may now gratify themselves; mine I shall see flow with pleasure, if with it flows the freedom of my country." At least, he expressed himself in language of the above import; and did afterwards take the chair as preses of the meeting, and presumptuously did continue to sit and act, until he was, by the said sheriff-substitute, pulled from the chair; which conduct of the said Joseph Gerrald was highly aggravated, from the circumstance that the said illegal association had been, the preceding day, dispersed by the magistrates of Edinburgh, as being illegal; and also, that the said Joseph Gerrald had, the preceding day, been apprehended on a warrant of the said sheriff-substitute, and ordered to be committed to gaol, for being a member of the said illegal association till liberate in due course of law. And the said Joseph Gerrald, when apprehended and carried before Harry Davidson, esq. sheriff-substitute of the county of Edinburgh, on the 5th of December, 1793, did, in his presence, emit and sign a declaration. And sundry papers having been found in the possession of the said Joseph Gerrald when first apprehended, and afterwards inspected in his presence, by authority of the sheriff of Edinburgh, two lists or inventories of these papers were made up; one of which, consisting of ten articles, subscribed by the said Joseph Gerrald, and William Scott, procurator fiscal of the county of Edinburgh; and the other, of nine articles, is subscribed by the said William Scott and the sheriff-substitute. Which inventories, with the whole articles therein contained (except No. 1. which had been returned to the said Joseph Gerrald), as also, the foresaid declaration, emitted by him before the sheriff-substitute of Edinburgh; together with copies of Nos. 78, 79, and 80, of the newspaper called, "The Edinburgh Gazetteer;" as also, the scroll or draught of the minutes of the said general convention, from the 29th of October to the 4th of December, 1793, consisting of 95 pages,* and found in the custody of William Skirving, secretary to the said convention, when apprehended by warrant of the sheriff of Edinburgh, in the month of December last, being No. 1 of the inventory of papers found in the possession of the said William Skirving, and made up in presence of the sheriff of Edinburgh, upon the 5th of December last, with the said inventory itself, and the whole of the other papers and writings therein contained; as also, an inventory of sundry papers found in the custody of Charles Sinclair, one of the members of the said convention, and made up in presence of the sheriff of Edinburgh, upon the 7th of December, 1793, consisting of twenty-one articles, with the whole of the said twenty-one articles themselves, being all to be used in evidence against the said Joseph Gerrald on his trial, will, for that purpose, in due time be lodged with the clerk of the high court of justiciary, before which he is to be tried, that he may have an opportunity of seeing the same. At least, times and places above-mentioned, the said acts of sedition were committed, and the said Joseph Gerrald is guilty actor, or art and part thereof. All which, or part thereof, being found proven by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of justiciary, in a court of justiciary to be holden by them within the criminal court-house of Edinburgh, upon the seventeenth day of February instant, the said Joseph Gerrald, above complained upon, ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming. Our will is herefore, &c.

* See the Minutes of the Convention and the extracts from Nos. 78, 79, and 80, inserted in the case of Skirving, *ante*, pp. 391, *et seq.*

LIST OF WITNESSES.

1. Harry Davidson, esq. sheriff-substitute, or late sheriff-substitute, of the county of Edinburgh,
2. William Scott, procurator-fiscal of the county of Edinburgh.
3. James Williamson, clerk to the said William Scott.
4. Archibald Welsh, also clerk to the said William Scott.
5. John Dingwall, writer in Edinburgh.
6. Joseph Mack, writer in Edinburgh.
7. James Lyon, messenger in Edinburgh.
8. John M'Donald, residenter in Edinburgh.
9. Neil M'Glashan, residenter in Edinburgh.
10. Alexander Williamson, sheriff-officer in Edinburgh.
11. George Ross, clerk in the gazetteer-office, Edinburgh.
12. William Ross, clerk in the Gazetteer-office, Edinburgh.
13. Alexander Aitcheson, student of medicine, residing in Canongate of Edinburgh.
14. Mitchell Young, painter in Edinburgh.
15. John Wardlaw, writer in Edinburgh.

16. John Laing, wright in Nicholson's-street, Edinburgh.
17. John Clark, mason in Edinburgh.
18. William Romanes, merchant, Lawn-market, Edinburgh.
19. Thomas Cockburn, merchant, Lawn-market, Edinburgh.
20. Samuel Paterson, merchant in Edinburgh.
21. Andrew Newton, formerly tobacconist in Dunse, now residing in St. Patrick's square, Edinburgh.
22. Alex. Reid, joiner and cabinet-maker, residing in Edinburgh.
23. John Gourlay, watch-maker in Edinburgh.
24. Archibald Binnie, type-founder, in Edinburgh.
25. David Downie, goldsmith in Edinburgh.
26. John Buchanan, baker in Canongate of Edinburgh.
27. Alexander Fortune, leather merchant in Canongage of Edinburgh.
28. John M'Intyre, teacher in College-wynd of Edinburgh.
29. The right hon. Thomas Elder, lord provost of the city of Edinburgh.
30. Niel M'Vicar, esq. one of the magistrates of Edinburgh.
31. James Laing, one of the deputy city clerks of Edinburgh.
32. John Campbell, residenter in Edinburgh.
33. John Fraser, residenter in Edinburgh.
34. Benjamin Rise, residenter in Edinburgh.

LIST OF EXCULPATORY WITNESSES. *

Right hon. Robert M'Queen, lord justice clerk.
Sir Philip Ainslie, bart.
Miss Charlotte Ainslie, daughter to sir Philip.
Mrs. Watson, alias Rochead, widow of ——— Rochead, esq. of Inverleith.
Mrs. Christian Dundas, sister to the secretary of state.
Miss Dundas, niece to do.
Charles Hay, esq. advocate.
——— Davidson, clerk to Charles Hay, esq.

Witnesses to prove the charge in the declinature against lord justice clerk.

Dr. Yule.
George Sinclair, son to the late Robert Manson Sinclair, of Bridge End.

To disprove the papers alleged to have been taken from Charles Sinclair; and to prove that the messenger, Lyon, had refused to show the warrant, although Sinclair had frequently desired it, alleging he had orders from the sheriff and procurator fiscal, not to show it.

John Pringle, esq. late sheriff of the county of Edinburgh.
Harry Davidson, esq. sheriff-substitute.

* In the original edition, this list was placed at the end of the trial.

To prove that they had delivered a paper to Gerrald, out of Charles Sinclair's papers, which he (Gerrald) claimed as his own, prior to Charles Sinclair's extra-judicial examination.

George Ross, clerk, Gazetteer-office.

To prove that Gerrald was a member of the same section with himself, and never once attended a meeting of such section.

LIST OF ASSIZE.

James Donaldson, bookseller in Edinburgh.
David Ramsay, printer there.
David Deuchar, seal engraver there.
Peter Hill, bookseller there.
5 Alexander Wight, baker there.
Thomas Tibbets, hatter there.
John Bell, bookseller there.
Alexander Pitcairn, insurance-broker there.
David Bridges, merchant there.
10 James Hunter, merchant there.
Hector Gavin, engraver there.
James Cunningham, baker there.
Andrew Milligan, watch-case maker there.
Sir William Forbes, bart. banker there.
15 Alexander Spence, jeweller there.
Peter Mathie, jeweller there.
John Millar, optician there.
Alexander Gardner, jeweller there.
William Creech, bookseller there.
20 Thomas Hutchison, merchant there.
Andrew Kay, Glazier there.
William Cuming, shoemaker there.
Thomas Kennedy, glover there.
John Hutchison, merchant there.
25 James Fyfe, merchant there.
John Sibbald, smith there.
Alexander Nisbet, manufacturer there.
James Collier, merchant in Edinburgh.
John Little, merchant there.
30 Alexander Dudgeon, baker there.
William Ranken, taylor there.
Patrick Main, painter there.
Alexander Smith, baker there.
John Spence, painter there.
35 James Hunter, baker there.
Alexander Wright, wine-merchant there.
James Craig, architect there.
William Murray, baker there.
Thomas Hunter, grocer there.
40 William Calder, merchant there.
John Sinclair, merchant there.
James Simpson, baker there.
Thomas Malcolm, shoemaker there.
William Crawford, smith there.
45 Archibald Campbell, brewer there.

ROB. M'QUEEN.
ALEX. MURRAY.
DAV. RAE.

Lord Justice Clerk.—Joseph Gerrald, what do you say to this? Are you guilty or not guilty?

Mr. *Gerrald.*—Not guilty, my lord.

Mr. *Gillies.**—My lords, in a case like the present, which has been pleaded by counsel of the very first eminence, and which has already received the solemn consideration of this Court, it is a difficult task for any counsel, and especially for a young counsel, to go over the same grounds again, and that too with the view of directly and strongly maintaining, that other views ought to have guided your lordships judgment formerly, and that other views ought to guide it now. Added to this, is that firmly-rooted and wide-spread notion of the guilt of all those who stand at this bar accused of sedition. The temper of men's minds, from many obvious causes, is such, that they consider a person at this bar, under this accusation, as already condemned;—that it is almost unnecessary to plead for him, except as going through the forms; while he, whose fortune it is to undertake such a cause, is considered as, in effect, a sharer of the crimes imputed to him whom he defends, and, by doing his duty, may incur all the consequences that ought only to follow his not doing it.—As to the panels thus brought before you, the public eye considers them as the personal enemies of us all.—They do not aim, as we are taught to think, at the ruin of this or that individual—we have not merely a remote interest in their destruction, but it is absolutely essential to our own personal safety. Our properties, our lives, our all, are represented as the objects of their violence; and against danger so near, and danger so dreadful, we should not be scrupulous about our means of defence. The strongest feelings of our nature, those of self-preservation itself, are thus called into instant energy amongst us all. It is difficult in such circumstances to judge right; and the difficulties are altogether on another side from what takes place commonly. In the common case, the chief danger is of injustice arising from compassion and mercy. Here the danger is of injustice being done (unwillingly done, yet done effectually) from motives of fear, and of anger against those who have caused that fear. In such a case it behoves us to examine ourselves; to be sure of the grounds upon which we proceed; to banish the least appearance of passion; and to renounce a judgment, however deliberately considered, if an after deliberation show it to be even doubtful. It is impossible to deliberate too much.

Knowing well that in these respects your lordships think exactly as I do, and encouraged by this consideration, I shall go on to state, as well as I can, such arguments as have occurred to me in favour of the unfortunate gentleman who stands at your lordships bar. I hope to show your lordships, that the indictment is altogether irrelevant,—at any rate that it is irrelevant to infer that punishment which has been inflicted in the other cases of sedition.

The crime charged in the major proposition of this indictment, is sedition, in vague and general terms.—I know very well, that by the laws of this country, explained as they are, and ought to be, by the practice of this Court, the crime in this part of the indictment may be charged in general terms. I know that many crimes are so: in cases of robbery and murder, for instance, it is not necessary to state these crimes particularly, or to refer to the statutes, which prohibit the commission and affix the punishment due to these offences. But where the law has annexed different degrees of punishment to different species or degrees of the same offence, then, if the crime is charged in general in the major proposition of the indictment, the least culpable species of the offence must be meant, and the lesser punishment only can be inflicted. Thus, in the case of theft, simple theft is not a capital crime; but if aggravated by house-breaking, it is punished with death. Now, if theft is charged generally, without this aggravation, the arbitrary punishment due to the offence of simple theft, is all that your lordships can award. In the same manner, with regard to sedition, I believe it is laid down, by every writer of eminence, that there are two species of sedition, verbal and real—a smaller and a greater offence, to which our laws have annexed two different degrees of punishment. The punishment of the first offence, verbal sedition, is fixed by a statute which I shall afterwards mention particularly; and as sedition is charged generally in this indictment, the lesser offence must be understood. Upon this ground alone, I trust the punishment must be restricted to the lesser species of the crime; for if it was intended to accuse this gentleman of a greater offence, the greater offence ought to have been stated; it cannot, therefore, be construed into any thing more than verbal sedition, or leasing-making, and the lesser degree of punishment can only be inflicted.

I trust, from this argument, that it must be considered as verbal sedition. It will at least be admitted, that where a crime is charged in general, the degree and species must be gathered from the particulars charged in the minor proposition. The questions, therefore, now to be submitted to your lordships consideration, are these:—

In the first place—Whether the facts stated in the minor proposition, amount to any crime at all?—whether they amount to sedition of any kind whatever?

In the next place—Whether, if they are criminal, they amount to verbal or real sedi-

* He was appointed a lord of session on 23d November, 1811,—One of the lords commissioners of justiciary on 3d March, 1812,—And one of the lords commissioners of the jury court on 26th June, 1816.—There were one or two slight errors in the printed report of this argument, which have been kindly pointed out to me by lord Gillies, and which are here corrected.

tion? and if they amount only to verbal sedition, what is the punishment affixed by our law to that crime?

The first charge in the indictment is, that "the said Joseph Gerrald, above complained upon, has presumed to commit, and is guilty actor, or art and part, of the foresaid crime, in so far as a number of seditious and evil-disposed persons having illegally assembled at Edinburgh, during the months of October, November, and December, 1793, the said Joseph Gerrald, above complained upon, did come into this country, for the purpose of joining and assisting these persons, and became a member of their illegal and seditious association and meeting; which illegal and seditious association and meeting, at first assembled under the designation of a General Convention of the Friends of the People, but thereafter, presumptuously and seditiously assumed the name of the British Convention of the Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments."

My lord, the illegality and sedition laid to the charge of the British convention, must consist either in the meeting itself being illegal, or it must consist in the illegality of the object which they had in view—that is, the obtaining universal suffrage and annual parliaments,—a reform in the representation of the Commons House of Parliament.

Setting aside the object of the convention, the first question is, whether such a meeting is or is not legal? whether is it allowed, or whether is it punishable by the laws of this country? Laying out of consideration the object which they had in view, the question affects every one who hears me; for who is there amongst us who has not been present at some convocation without legal authority? If this is to be punished as sedition, every one present is liable to that punishment. The actions of these men so assembled together (I shall speak afterwards of their speeches and resolutions, but I say their actions) were inoffensive and orderly; they are not accused even of the slightest breach of the peace. No doubt that, by the ancient statutes of this country, convocations within boroughs were prohibited; but what was the nature of those convocations will appear from the statutes themselves. I shall therefore read the act 1563, ch. 85:—"It is statute and ordained, that nane of our soveraine ladie's lieges presume, pretende or take upon hand to make onie privie conventiones nor assemblies within burgh, put on armour, cleeith themselves with weapons, or make sound of trumpet, or talbrone, or use culveringes, displayed banners, hand seingies, or uthers instruments bellical quhat-sumever in onie time hereafter, without the special licence of our said soveraine ladie and her hienes' magistrates within the burgh quhair the said tumult and uproar chauncis to be had and obtained thereto, under the paine of death."—Sir Geo. Mackenzie, in his observation upon this act, says,—"It seems, that mere convocations or assemblies are not, *per se*, punishable by death, without putting on armour or displaying banners."—Thus, in order to bring the British convention within this enactment, its members must have appeared in armour, and with banners, surrounded with all the "pride, pomp, and circumstance of war." The appearance of their meeting was surely very different. Their only armour was their tongues and their pens, and a few blotted and blurred sheets of paper the only banners which they displayed. It is not upon this act then that any proceeding against this convention can be founded. Unarmed convocations were not at this time prohibited by any law whatever, nor were they declared to be illegal until the accession of James 6th. It was the wish of that monarch, as your lordships know, to abolish presbytery, and to repress the powers of ecclesiastical jurisdiction vested in the presbyterian clergy. The disputes which thus arose betwixt him and the clergy, was the occasion of a statute upon this subject. By the act 1584, ch. 131, "It is statute and ordained be our said soveraine lord and his three estaites that nane of his hienes subjects of quhat-sumever qualitie, estaite or function they be of, spiritual or temporal, presume or tak upon hand to convocate, conveene or assemble themselves togiddir, for halding of councelles, conventiones, or assemblies, to treat, consult and determinat in ony matter of estaite civile or ecclesiastical (except in the ordinar judgement) without his majesties special commandement or expresse licence, had and obteined to that effect, under the paines ordained be the lawes and actes of parliament against sik as unlawfully convocatis the kingis lieges."

After this an act was passed in the same reign, 1606, chap. 17, by which the act of 1584 was confirmed, with an addition that I shall now read to your lordships. "That na person nor persons within burgh, whatsomever rank, quality, or condition they be of, presume nor take upon hand from this forth, under whatsomever cullour or pretext, to convocate or assemble themselves together at any occasion, except they make due intimation of the lawful causes of their meetings to the provost and baillies of that burgh, and obtein their licence thereto, and that na thing be done nor attempted by them in their saids meetings, whilk may tend to the derogation or violation of the actes of parliament, lawes, and constitution made for the well and quyetness of the saids burghs. Declaring by thir presents, the saids unlawful meetings and the persons present thereat to be factious and seditious, and all proceedings therein to be null and of nane availl. And the saids persons to be punished in their bodies, goods, and geare, with all rigour conforme to the lawes of this realme."

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Your lordships see, that by this act, all persons are prohibited of any rank, quality, or condition, from convocating or assembling themselves together, upon any occasion, except they give due intimation to the provost and magistrates.

My lords, it is no doubt true, that if these acts are still in force, they apply directly to the British convention; but if these acts are still in force they apply not merely to the British convention, but to nine-tenths of all the meetings that are held in Edinburgh. These statutes, if enforced, would be attended with effects at once the most serious and ludicrous. We might be conveyed from the rooms in George's-street, or George's-square, to the Tolbooth, from the Tolbooth to your lordship's bar, from your lordship's bar to the hulks at Woolwich, and from the hulks to Botany-bay, with a catastrophe very dissimilar from the commencement.

Upon these statutes sir George Mackenzie says, "this crime of simple convocation is ordinarily pursued before the council, and is seldom punished, either by the council or justice court, *tanquam crimen per se*, but as the aggravating quality of a riot or other crime." My lords, this was the case before the revolution; that it was never prosecuted but as the aggravating quality of another crime. Since the revolution, I believe there has been no trial whatever for this offence; I apprehend therefore that prosecutions upon these statutes are prohibited by a passage in the claim of rights, which I shall now read to your lordships. In the claim of rights is the following passage:—"That the causing pursue and forfeit persons upon stretches of old and obsolete laws, upon frivolous and weak pretences, upon lame and defective probation, as particularly the late earl of Argyle,* are contrary to law." My lords, if before the revolution the meeting in unarmed convocations was only punished as an aggravating quality of another crime, and since has not been punished at all, we must necessarily conclude that it falls within this enactment, in the claim of rights, of obsolete statutes. As an aggravating quality of a crime, it may operate to prevent the mitigation, or to increase the severity of a punishment;—but though it may increase the degree of the crime, it cannot alter the nature of it; it cannot convert verbal sedition into real sedition.

But if any thing farther is necessary to show that no man can now be tried upon these old statutes, it will fully appear from two acts that I am now to mention. The act against conventicles, 1670, chap. 5, has the following preamble:—"Forsameikle as the assembling and convocating of his majesty's subjects, without his majesty's warrand and authority, is a most dangerous and unlawful practice, prohibit and discharged by several laws and acts of parliament, under high and great pains. And that notwithstanding thereof divers disaffected and seditious persons, under the specious but false pretences of religion, and religious exercises, presume to make, and be present at, conventicles and unwarrantable meetings, and conventions of the subjects, which are the ordinary seminaries of separation and rebellion, tending to the prejudice of the public worship of God in the churches."

Your lordships will observe, that in this preamble, it is positively declared that conventicles fell within these old statutes made against unarmed convocations, previous to this statute. Those conventicles were subject to punishment, as being unarmed convocations of the people, and falling within the statute I formerly read to your lordship, enacted in the reign of James 6th. In the reign of William and Mary, this act against religious conventicles was expressly repealed; but I say the repeal of that act is of no avail, if these old statutes are still in force. It is of no avail, because men who so meet in conventicles may be punished under the old statutes passed in the reign of James 6th. Unless therefore this statute, which was considered at the time as a great attainment to the liberties of the country, unless it is considered as nugatory, we must understand that all those statutes against unarmed convocations are now obsolete. In consequence of these acts every clergyman, who is not a member of the established church of this country, might be punished for holding unarmed convocations. By the act passed under James 6th against such convocations, the preacher might be carried from the pulpit, and the audience from their seats, to this bar, and punished with death! The act of William and Mary, therefore, is of no avail, if those old statutes against unarmed conventions are still in existence. Indeed, from the absurdity to which they would lead, it must be demonstrable to your lordships, that they can be no longer put in force.

Holding, therefore, that the simple act of meeting in convention, as these persons are said to have done, in itself contains nothing criminal. The question that next remains to be considered is, whether criminality is attached to them on account of the professed object which they had in view, the obtaining universal suffrage and annual parliaments,—a reform in the representation of the Commons House of Parliament.

My lords, this is a question of politics on which I have no occasion to deliver my own opinion. All that I have now to inquire is, whether the particular charges, preferred against the panel in this indictment, amount to the generic crime of which he is accused. The panel is here said to have been guilty of sedition, because he associated with a number of others in order to obtain universal suffrage

* See his case in this Collection, Vol. 8, p. 843.

and annual parliaments. This attempt may in one sense of the word be termed illegal—inasmuch as it certainly had for its object an alteration of the existing laws of this country. But in this sense of the word, the proposal of every new law may be equally termed illegal. It must therefore be a different species of illegality from this that the public prosecutor annexes to this convention, when he calls it an illegal and seditious meeting; and yet, my lords, if there is any new law, or any alteration more than another upon our present laws, in the propriety of which a majority, and a great one too, of every description of the people of this country has concurred, it is in this one thing—of a reform in the representation of parliament.

Men of all ranks and descriptions, from the highest to the lowest, from the most learned to the worst informed, have at one period or another declared their approbation of this measure. As to the mode or degree in which it should be attempted, different opinions have been held by different men; and this difference as to the mode has hitherto prevented the object itself from being attained.

Upon this point, all the eminent men who at present shine in the councils of our nation have declared their opinions, at one time or another, and almost all of them have acknowledged the necessity of a reform. Mr. Pitt, who enjoys at present the favour of the crown, and the confidence of parliament, has given his opinion, not merely in favour of reform, but decidedly in favour of that species of reform which consists in introducing universal suffrage and annual parliaments.* Mr. Fox has also declared himself a friend to reform, though not to the same length which Mr. Pitt has gone; and, on this account, the gentleman at the bar has spoken of this great statesman in terms of considerable disapprobation. In the course of a long political life, which might be regarded as unfortunate, if the enjoyment of true glory were not to be preferred to the possession of power, Mr. Fox has all along declared himself an enemy to universal suffrage, and if I am not mistaken, to annual parliaments. Where such great men differ, it is not for us to decide; but surely much blame cannot be imputed to the man whose opinions are sanctioned by either of such authorities. It would be hard, indeed, if this gentleman were to be punished, merely for having adopted the opinions of Mr. Pitt in preference to those of Mr. Fox—that the same sentiments which have served to place one man at the head of the nation, should expose another to the vengeance of her laws—that they should raise the one person to the height of preferment, to the pinnacle of his ambition, and plunge the other into the deepest abyss of human wretchedness.

My lords, what I am going to read will show you, that these sentiments have been held by men of the first eminence, in point of rank, in point of reputed abilities, fortune, and of power. The pamphlet from which I read was published under the auspices of a society which owed its formation in a great measure to the duke of Richmond and Mr. Pitt; and of which they were long the leading members. The language does not disgrace its authors:—"Every application, therefore, for the redress of the present grievances of the nation, that shall be made to a body of men, no longer under the influence of their constituents, but, on the contrary, uniformly acting in subserviency to the views and interests of the crown, must of necessity be unsuccessful; and from the natural effect of disappointment upon the human mind, will probably impair the vigour of every future exertion." In another passage, "that the restoration of the Commons' House of Parliament to freedom and independency, by interposition of the great collective body of the nation, is essentially necessary to our existence as a free people." I shall only read one other passage:—"An equal representation of the people in the great council of the nation, annual elections and the universal right of suffrage, appear so reasonable to the natural feelings of mankind, that no sophistry can elude the force of the arguments which are urged in their favour; and they are rights of so transcendent a nature, that, in opposition to the claim of the people, to their enjoyment, the longest period of proscription is pleaded in vain. They were substantially enjoyed in the times of the immortal Alfred; they were cherished by the wisest princes of the Norman line; they form the grand palladium of our nation; they ought not to be esteemed the grant of royal favour; nor were they at first extorted by violence from the hand of power. They are the birthright of Englishmen, their best inheritance, which without the complicated crimes of treason to their country, and injustice to their posterity, they cannot alienate or resign. They form that triple cord of strength, which alone can be relied on, to hold, in times of tempest, the vessel of the state."

My lord, this charge then of having wished for universal suffrage and annual parliaments contains nothing criminal, nothing relevant to infer any punishment at all; and much less the punishment that has been inflicted on the crime of sedition. I am not now maintaining that a reform in parliament is expedient, and still less that annual parliaments and universal suffrage should be the mode of that reform. That mode may be improper—so Mr. Fox thinks it, in opposition

* This mistake as to the opinions of Mr. Pitt on the question of parliamentary reform, I believe, originated in the expressions of one of the counsel who defended Daniel Holt.—See his case, *antè* Vol. 22, p. 1228, and the note, p. 1198 of the same volume.

to what Mr. Pitt thinks, or at least most certainly thought; and so your lordships, in opposition to Mr. Pitt, may also think it. But, if the duration of parliaments has been different at different times, if the elective franchise has also been different at different times, and if our laws have oftentimes varied and altered both, and may in future vary and alter them again; then this is a subject upon which every inhabitant of the country is at liberty to form his own opinion, and take such measures as he thinks proper for promoting those changes of which he approves. In a matter of this kind, open to the deliberation of all, the only question is, whether the measures taken are legal. If illegal measures are employed either to promote or oppose a reform, they are equally punishable in the one case as in the other. My lords, it is here stated, that it was criminal to propose this reform in the convention; and as actions, innocent in themselves, may be made criminal by their relations and accompaniments—so the public prosecutor maintains that this convention gives the tinge of criminality to the proposed reform, in itself perfectly blameless. But your lordships will attend to where this argument leads. It has been shown, and I trust will scarcely be denied, that to meet in a convention for innocent purposes is entirely innocent; on the other hand, it has been equally shown, that it is not criminal to wish for annual parliaments, or universal suffrage; but, says the public prosecutor, it is criminal to wish, or to express a wish, for universal suffrage in a convention. This is strange arguing—it is innocent to meet in a convention; it is innocent to wish for universal suffrage and annual parliaments; but it is criminal to meet in a convention, and there to wish for universal suffrage and annual parliaments. So that these two actions, perfectly innocent in themselves, when joined together, form a crime. It is a common saying, that two blacks cannot make a white; but it seems the converse holds good, that two whites may make a black. It appears that these men have wished for universal suffrage and annual parliaments, and that they have wished for it in a convention; but if it be lawful to meet in a convention, without expressing such a wish, and if the wish itself be innocent, it is totally impossible, that these two acts, in themselves innocent, can form a crime. As in arithmetic, a thousand cyphers will not make a single unit, so in morals and in law, a thousand innocent actions can never constitute one crime. I apprehend, therefore, that I have shown that the great and general charge in this indictment, of having become a member of this association, for the purpose of obtaining universal suffrage and annual parliaments, contains in it nothing illegal whatever.

It now remains to inquire, whether the resolutions, said to have been adopted, and the speeches, said to have been made by the gentleman at your lordships bar, contain in themselves any thing criminal; whether they show that he had any intention contrary to, or different from the professed object of the convention, of which he was a member, that professed object being innocent.

The indictment goes on to state, that "in the whole form and manner of their procedure, as well as in the principles they avowed and propagated, clearly and unequivocally demonstrate, that their purposes were of the most dangerous and destructive tendency, hostile to the peace and happiness, and tending to subvert the constitution of this realm; imitating, in the form and tenor of their proceedings, the convention of France, the public and avowed enemies of this country; and with whom Great Britain then was, and still is, at war. The members calling each other, at their meetings, by the name of citizen, dividing themselves into sections, receiving reports from said sections, some of which bear date, Liberty Court, Liberty Stairs, Liberty Hall, first year of the British convention, one and indivisible; and some of which have *vive la convention* prefixed, and end with *çà ira*; instituting primary societies, provincial assemblies, and departments," and so forth. My lord, as to the words liberty court, and liberty hall, they surely contain nothing criminal. Liberty, both the word and the thing, has long been known, and I hope, long will be so in this country; there is nothing French in it. As to the French phrases, I admit that they are very foolish; I cannot conceive that a person of the abilities of this gentleman could have made use of them; and I believe it will be proved (if this cause goes to proof) that he had no concern in them. When the old despotism subsisted in France, French phrases were frequently used; but nobody ever supposed that they who then adopted this foolish phraseology, had any intention of introducing French despotism into this country. Folly and guilt are very different things. The use of such phrases may expose one to deserved ridicule, but not to punishment.

But where would have been the crime, even if the resolutions of this convention had been written in French altogether? However much we may abhor French principles, we are not now making war upon the French language: such contest would resemble the wars of the Greeks and Trojans; not those recorded by Homer, and which have immortalized the plains of Ilium; but those battles of a later date, commemorated by our own countryman, the Spectator, and which were fought with less bloodshed in the streets of Oxford. When it was first attempted to introduce the study of Greek into that university, the attempt, as your lordships know, was violently opposed. *Græcum est, non potest legi* was then the sentence of condemnation pronounced upon a book, and the signal of hostility against all who presumed to read it. The Trojans, how-

ever, were defeated; the study of the Greek was introduced, and has flourished at Oxford, and no *sedition* has followed it.

My lords, the indictment has been read, and therefore I will not go at length into it. Here is a long speech, said to have been uttered by the gentleman at the bar, which contains a great deal of matter, tending, no doubt, to make all persons who heard it, form an opinion in favour of annual parliaments and universal suffrage. The conclusion of this speech winds up the whole matter. "Let us then endeavour to instruct the people in their rights, and to inform them of our views and our intentions; they will come and sign our petitions, and we shall be enabled to send them up subscribed by a majority of the people. The voice of the people will be heard wherever it is spoken in the language of truth, and by a number so respectable as to *command* attention; and it will soon have that respectability if we have reason on our side." I see that the word *command* is here put in italics, as if it implied or suggested the least idea that violence or force was intended. The word must be explained by its correlative, the substantive which it governs,—attention. It cannot imply that he was to make use of force to gain attention, but to seek for numbers, as convinced of the truth and utility of what he proposed; and if numbers and truth cannot procure attention, what can? The tenor of this paragraph, as I have said, sums up the import of his whole speech, and shows that nothing like force was intended. It expressly states "let us then endeavour to instruct the people in their rights, and to inform them of our views and our intentions; they will come and sign our *petitions*." It is not in the form of *petition* that those persons appear who mean to use violence: it is impossible, therefore, that a word used figuratively can imply that violence was meant, or could possibly be intended.

But if I am rightly informed, considerable stress has been laid in former trials upon this resolution, said to have been come to by the convention. The indictment states, that "the said association, or meeting, did wickedly and feloniously, then and there, all the members standing on their feet, solemnly and unanimously come to a resolution of the following import or tenor, That this convention, considering the calamitous consequences of any act of the legislature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themselves, or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our known and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country; and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people, and annual election, until compelled to desist by superior force." Now what is contained in this resolution? It contains a declaration, that they will not yield obedience to an act which has never yet even been proposed in our parliament; and which, I trust, the situation of this country will never be such as to render necessary. What they say is this, they will not yield obedience to an act if it should pass, not to an act of parliament in existence, but an act which exist *in potentiâ* only, which is no more law than the most extravagant proposition that can be conceived. If this is criminal, it is a crime of a most anomalous and extraordinary nature. They would not yield obedience to that which, perhaps, never might be a law: this, I say, is a crime of such an anomalous and non-descript nature, that I know not under what term, or what degree of punishment it can fall. But at any rate, certainly the crime of saying that I will not yield obedience to an act, if it should pass, cannot be equivalent to disobeying an act after it is passed. Now to what consequences may this lead? I shall suppose that an act had passed prohibiting conventions; that it had said that no convention was to assemble, to deliberate upon any public subject; and that any persons who might afterwards meet, should be liable to a fine of 20*l.*, and imprisonment for a month. After this law a convention meets, in opposition to the act; they are accordingly dispersed, and the persons guilty are punished according to the penality stated in the act; but these men who have not disobeyed any act, they having only resolved to disobey such an act if it should be passed, are to be punished with fourteen years transportation to Botany Bay! Such are the consequences that may follow; the members of this convention are to undergo a punishment beyond all ordinary bounds, for only having declared their intention to disobey an act, not in existence; while those, who in fact should disobey it, might be liable only in a trifling penalty.

My lords, I say again, that it is impossible that any violence could have been here intended, because if they were to disobey this supposed act, how were they to disobey it? They must have met in an unarmed and peaceable convention; for it is by so meeting alone, that they could act in disobedience of such a statute. If they had assembled, or if they, or any other persons should be bold enough to assemble now, in an armed convention, they would not disobey a statute similar to that passed in Ireland; they could only disobey that by meeting in a peaceable, quiet, and orderly manner, to deliberate on public affairs. But if they had met violently and armed, it would have been in opposition to statutes that have long existed in this country;

and of which the enactments are fully competent to repress all such illegal violence.

My lords, this is taking the resolution in its very worst sense; but take this, which may be considered as the preamble of the resolutions, and let it be explained as in fairness it ought to be, by the resolutions which follow: the first resolution here is, "that the first notice given for the introduction of a convention-bill, or any bill of a similar tendency to that passed in Ireland, in the last session of their parliament, or any bill for the suspension of the Habeas Corpus act, or the act for preventing wrongous imprisonment, and against undue delays in trials in North Britain, or in case of an invasion, or the admission of any foreign troops whatever into Great Britain or Ireland; all, or any one of these calamitous circumstances shall be a signal to the different delegates, to repair to such place as the secret committee of this convention shall appoint."

Now, your lordships will observe, when, and on what occasion they were to meet—they were to meet, not after the statute had passed, but when a bill was introduced for passing it—what could be the object of such meeting? It must be to prevent it passing into a law, and to remonstrate, as they had a right to do, against the passing of it. They meant to petition parliament, supported by such numbers, undoubtedly, as they could procure, to prevent such a bill from becoming the law of the land. The object of their meeting, therefore, was to use their best endeavours, in a constitutional manner, to prevent this bill from being passed into a law; and this resolution clearly proves that they meant to meet when the bill was brought in, not for the purpose of disobeying an act, but to prevent it, by all lawful means, from being made an act binding the subjects of this country to obedience. They were to meet upon the introduction of a convention bill, or of a bill for the suspension of the Habeas Corpus act, or of the act for preventing wrongous imprisonment; that is, they were to meet in order to remonstrate, in a constitutional manner, with parliament against the repeal of those salutary statutes which guard the rights and liberties of us all. Again, in case of an invasion, the folly of the resolution is also stated in the indictment as criminal, that "the first seven members shall have power to declare the sittings permanent, and twenty-one shall constitute a convention, and proceed to business." Instead of any thing criminal here, all is innocence If twenty-one were to constitute a convention, they could not surely be an armed force to assist the invaders, they could with difficulty even have repelled them. There is also stated in this indictment, a second speech, said to be made by the gentleman at the bar, of which I shall read the conclusion. It is printed in italic, and therefore, I presume the public prosecutor meant to lay particular stress upon it. "If the servility of the people had been less, if they had dared to meet, and in place of murmuring, to have told their rulers that there was danger in seeking to deprive them of their liberties, we would not have had to adopt this resolution to-night, but when I saw the calm deliberate countenances of all present, and the solemn manner in which it was passed, I was convinced that it would not only be a resolution of words, but a rule of action." Now, what is a resolution but a rule of action? My lord, every resolution is, or ought to be, a rule of action, and is intended to be such when it is formed: this, therefore, is a very proper expression to enforce, and explain more fully the deliberate nature of the resolution entered into, to meet and endeavour to oppose such a bill from passing into a law, a bill to prevent peaceable and unarmed conventions from meeting in this country.

The indictment goes on to state, that the said meeting came to a resolution, "That a secret committee of three and the secretary, be appointed to determine the place where such convention of emergency shall meet. That such place shall remain a secret with them, and with the secretary of this convention, and that each delegate shall, at the breaking up of the present session, be entrusted with a sealed letter, containing the name of the place of meeting. This letter shall be delivered unopened to his constituents, the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state, until the period shall arrive at which it shall be deemed necessary for the delegate to set out." Here is much secrecy, but nothing else. And secrecy was necessary, if peaceable conventions were to be prohibited. But an armed force cannot meet in secrecy, unless we are to suppose that the members of this convention were to assemble like the troops of Mr. Bayes, in disguise. The secrecy which they here observe, is the surest proof of their innocence and peaceable intentions.

My lord, in going through the whole of this indictment, I can perceive nothing relevant in it to infer the crime of sedition, or any other crime. The meeting itself was innocent, the object they had in view was innocent, and the speeches and resolutions said to have been made are also innocent; inasmuch as they were merely calculated to promote the avowed object of the convention. They wished for the support of numbers; but for what? To petition parliament. They were anxious that a bill should not be brought into parliament to prevent peaceable assemblies from meeting; and therefore they say they will prevent such bill, as far as they can, from passing into a law. This also was necessary for the attainment of their object. All that can be said against them, therefore, amounts to this, that they took the best measures they could for accomplishing their purpose of obtaining a parliamentary reform;

purpose legal in itself, and which, on all hands, is admitted to be, in a certain degree, necessary.

At all events, I humbly apprehend, that the facts stated in this indictment can only amount to verbal sedition—that there has been, in this case, no commotion, no rising of the people, and that speeches uttered, or resolutions formed, can only amount to verbal sedition, or leasing making.

In order to show this, I must trouble your lordships with reading the definitions given of sedition by our law-writers, comparing them with the charges set forth in the indictment, and also with the statutes respecting verbal sedition.

The first is sir George Mackenzie, book 1, title 7, who says, "sedition is a commotion of the people, without authority; and if it be such as tends to the disturbing of the government, 'ad exitium principis vel senatorum 'ejus & mutationem reipublicæ,' it is treason; but if it only be raised upon any private account, it is not properly called treason, but it is, with us, called a convocation of the lieges."

Sedition, therefore, is a commotion of the people, or a rising of the people, without authority, according to the definition given of it by this great lawyer.

A similar definition is given by Forbes, book 3, title 2, sect 1, "sedition is a commotion or rising of the people, without authority, in order to do any thing tending to a disturbance of the public peace, though the design be not executed, which is raised upon the public or private account."

According to Erskine, the crime consists in raising commotions or disturbances in the state.

I believe a definition more full and more accurate is given of this crime by Dr. Boyd, in his Justice of Peace, in book 1, title 5, "Sedition is any commotion or rising of the people, without lawful authority, and which tends to the disturbance of the public peace of the kingdom."

My lord, every one of these definitions represents sedition, not as consisting in peaceable convocations, or in the speeches and resolutions of such convocations, but as consisting in commotions or risings of the people.

Accordingly there is a most material distinction to be made between commotions and risings, and speeches and resolutions tending to excite commotions and risings. These speeches are termed seditious, but the expression is figurative: they are seditious merely on account of their tendency to excite commotions and risings of the people, which is really sedition; and this distinction is expressly pointed out by several of our statutes.

A man who makes speeches and resolutions, the tendency of which is to excite commotions, is guilty of verbal sedition, but is not guilty of that crime which he has failed to commit; he is not guilty of those commotions which his seditious speeches tended ineffectually to produce. If a person excites another to murder, and the deed is not perpetrated, he is not an accessary to the murder; he may be punished undoubtedly by the laws of this country, but he is not guilty of that murder which he instigated, but which he instigated in vain. In the same manner, these people may be guilty of having endeavoured to excite disturbances, but they cannot be punished guilty of those commotions which have not existed. This important distinction is fully recognized in several of our acts of parliament. In the act 1555, chap. 60, in the reign of Queen Mary:

"For sa-meikle as diverse seditious persones hes, in times bypast, raised amangst the commoun people, murmures and sclanders, speaking against the quenis grace, and sawing evil brute anent the maist christian king of France, his subjectes sent in this realme for the commoun weill, and suppressing of the auld enemies foorth of the samin, tending throw raising of sik rumours to steir the hearts of the subjectes to hatrent against the prince, and sedition betwixt the lieges of this realme and the maist christian kingis lieges foresaidis: and, for eschewing of sik inconvenientes as micht follow thereupon: it is devised, statute and ordained, that gif onie persones in times cumming, bee hearde speakand sik unreasonable commoning, *quhairthrow* the people may take occasion of sik prievie conspiracie against the prince, or sedition against the maist christian kingis subjectes foresaidis, the samin, being proven, sall bee punished according to the qualitie of the faulte, in their bodies and gudes, at the queenis grace pleasure: and, in case the hearer thereof report not the samin unto the queenis grace or her officiares to the effect that the samin may bee punished, as accordis, that he sall incurre the saidis paines, quhilkis the principal speaker or raiser of sik murmures deservis." In no less than two places this is pointed out, "tending throw raising sik murmures," to excite sedition, and again, "quhair-throw, the people may take occasion of sik prievie conspiracie."

Lord Justice Clerk.—What is the punishment?

Mr. *Gillies.*—In their bodies and goods at the queen's grace pleasure. The next is the act of 1584, chap. 134; this act points out still more clearly the distinction I just now stated.

"For-sa-meikle as it is understand to our soveraine lord and his three estaites, assembled in this present parliament, quhat great harme and inconveniente hes fallen in this realme, chiefly sen the beginning of the civile troubles occurred in the time of his hienes minorite, throw the wicked and licentious publick and private speaches, and untrew calumnies of divers his subjectes, to the disdaine, contempt, and reproch of his majesty, his councel and proceedings, and to the dishonour and prejudice of his hienes, his parents,

progenitours, and estaite; steirring up his hienes subjectes theirby to misliking, sedition, unquietnes, and to cast off their dew obedience to his majestie to their evident perrel, tinsel, and destruction, his hienes continuing alwaies in love and clemencie, towards all his gude subjectes, and maist willing to seek the safetie and preservation of them all, quhilkis wilfully needles, and upon plaine malice, after his hienes mercy and pardon, oft times afoir granted hes procured themselves be their treasonable deeds to bee cut off as corrupt members of this common weill: Therefore, it is statute and ordained bee our soveraine lord, and his three estaites, in this present parliament, that nane of his subjectes (of quhat-sumever function, degree, or quallitie, in time-cumming,) sall presume, or take upon hand privatly or publickly, in sermones, declamationes, or familiar conferences, to utter ony false, slanderous, or untrew speeches, to the disdaine, reproche, and contempt of his majestie, his councel, and proceedings, or to the dishonor, hurt, or prejudice of his hienes, his parents, and progenitoures, or to meddle in the affaires of his hienes and his estate present, by-gane and in time cumming, under the peines conteined in the actes of parliament, against makers and tellers of leesinges: Certifieing them that sall be tryed contraveners theirof, or that hearis sik slanderous speaches, and reportes not the same with diligence, the said paine sall be executed against them with all rigour, in exemple of utheris."

In consequence of the union of the two crowns, in the reign of James 6th. another act passed, to prevent national differences between the Scotch and English, from being excited by speeches and harangue, 1609, chap 9. The preamble of the act shows that it was historically such as I have stated to your lordship. "For remeed and preventing whereof, his majestie remembring how strait and severe punishment, hes by the laws and actes of his maist royall progenitors, kings of this realme heretofore, bene ordeined to be inflicted upon sik as should devise or utter false and slanderous speeches and writtes, to make dissentions betwene the prince and his subjects, or raise sedition in the realme, and considdering that all sik purposes and writtes, as may breed dislyking betwene the inhabitants of the saids kingdomes of Scotland and England, being now all become his majesties liege people, equallie subject and equallie beloved of his heighnes, tends to maist dangerous dissention and sedition amangs his subjects; therefore, his majestie, with advyce and consent of the haill estaites of this parliament, statutes and ordeines, that whasoever shall hereafter, by word or write, devise, utter, or publish, any false, slanderous, or reprochfull speeches or writtes, of the estate, people, or countrie of England or of any counseller thereof, tending to the remembrance of the auncient grudge borne in tyme of by-past troubles (the occasion whereof is now happilie abolished by the blessed conjunction of the saids kingdomes, under his majesties soveraignitie and obedience) or to the hinderance of the wished accomplishment of the perfect union of the saids kingdomes, or to the slander or reproch of the estate, people, or countrie of England, or dishonor, or prejudice of any counseller of the said kingdome whereby hatred may be fostred and intertained, or mislyking raised betwene his majesties faithfull subjects of this isle. The authors of sik seditious, slanderous, and injurious speeches or writtes, or dispersers thereof, after tryell taken of their offence, either before his majesties justice, or the lords of his hienes privie councell, shall be severelie punished in their persones and gudes, by imprisonment, banishment, fyning or mair rigorous corporall paine."

These are the statutes that point out, as I said before, and fully recognize the evident distinction that exists between commotions and risings of the people, and speeches or writings, tending to excite those commotions. Your lordships will also observe, that the crime stated in the act 1606 consists in endeavouring to excite disturbances, by sermons, declamations, or familiar conferences. Now, the declamations here mentioned, as distinct from sermons, upon the one hand, or familiar conferences on the other, must be precisely the same as the speech said to have been made by this gentleman, or the resolutions of the other members of the convention. It cannot be supposed that persons would declaim in the fields where there were none to hear them. Their declamations must have been addressed to an assembly of the people, met together, like this convention, in a room; or which would have been still more criminal, and of still more dangerous tendency, they must have been addressed to any accidental assemblage of people upon the public streets.

But it is charged against this convention, that their object, though professed to be a reform in the representation of the Commons House of Parliament, was really to overturn the government, and subvert the constitution of this country; and, it has been said, that the tendency of these speeches, joined to the intention with which they were uttered, converts this crime from verbal, into real sedition; that this circumstance takes it out of the case of leasing-making, where speeches are uttered, not with the evil intention that is ascribed to these persons, of subverting the constitution of the country, and changes it into real sedition, a crime of a different nature, and of a blacker dye.

My lords, if those persons formed a plan, and entered into a resolution, of overturning this constitution, and if that resolution is indicated by their actions, they are not guilty of sedition, but of high treason; and for that crime let them be indicted. I say again, if they formed this intention to overturn the

government of this country, and if this intention appears from their proceedings, they ought not to have been tried on an indictment such as this, but on a charge of high treason itself; a crime for which no punishment your lordships can here inflict is at all adequate. In the proceedings of the convention itself there is no proof of any such design. If such an intention was proved from their proceedings, the crime would be treason. The consequences are obvious. If the intention is not proved, the public prosecutor is not entitled to presume it, and arguing upon that presumption, to accuse this gentleman of a greater crime than what arises from his speeches, according to their plain and direct meaning. The intention of subverting the government is not here indicated in the way that the laws of treason require; that is, there is no sufficient proof of it, not even a vestige of evidence that could enable the public prosecutor to bring my client to trial for high treason. Did there exist any such proof, then the public prosecutor has neglected his duty, in not bringing an indictment for this crime. He cannot be permitted to say, that the proof of high treason being defective, he was obliged to charge for another offence, which very offence was to be aggravated by the treasonable intention he could not prove: the want of proof of one crime is not the proof of another crime. This would be to overturn all judicial procedure, to subvert every notion of jurisprudence. The members of this convention have formed that intention which is ascribed to them, of overturning the government of this country, or they have not. Their having formed it, is proved, or it is not proved. If it is proved, they are guilty of high treason. If it is not proved, this criminal intention must be laid out of consideration altogether, and cannot be permitted to aggravate the degree, much less to alter the nature of the offence charged in the indictment. The deficiency of proof of one crime can never give rise to a new, or a different crime; if I am accused of murder, and if evidence of the fact, that I committed the homicide is wanting, will that ever constitute a charge of manslaughter? I say that the deficient proof of a greater crime can never constitute a lesser crime—let the lesser crime be charged and punished as such, or let the greater crime be charged and punished as such. If it was the intention of the members of this convention to overturn the government of this country, they are guilty of treason.—If it was not their intention it ought not to be charged; and they are guilty of no crime at all.

Whether this gentleman at the bar has ever formed such intention is known to his own breast. Whether he has ever formed such intention is known also to that Being, and to that Being alone, who can search the hearts of men, and without aid of external circumstances, pronounce upon the secret motives of their conduct. But no human judge can assume this prerogative,—can presume guilt from constructions put upon speeches; constructions which may be different by different persons, and at different times; no man can lay his hand upon his heart, and upon constructions of this sort say, that this gentleman has formed any such intention. Even whatever may be his own opinion, he is not entitled to act upon that opinion here; as no legal proof of any sort has been brought, and no constructive proof of treason is known to our laws. I am speaking here as if the strange and illegal practice could be permitted, of bringing forward a higher crime, not to be punished itself, but as the aggravation of an inferior offence. Even in such preposterous proceedings, could this practice be countenanced for a moment, there is, in the present case, no evidence on which such aggravation could be placed.

My lords, the whole actions and proceedings of this convention may fairly, and with probability, and so far as it strikes my mind, can only be ascribed to their wishes to attain the proposed object which they had in view,—a reform in the House of Commons, by the introduction of universal suffrage, and annual parliaments. They may also have proceeded from the treasonable intention ascribed to them. But where these matters are doubtful, where the writings and resolutions of men may be ascribed either to bad or good motives, humanity and justice both require that they should be ascribed to motives that are good. When these resolutions express an avowed purpose, and when these men declare, in all their speeches and motions, that they wished not to subvert, but to reform the constitution, will you say from those very speeches and resolutions, that this was not their purpose? Are you, from speeches containing declarations that they wished for reform, to conclude that they did not wish for reform? Are you from speeches containing declarations that they wished to support the constitution, to conclude that they wished to subvert it? This is straining constructive evidence to a great length indeed. Those are questions upon which men, in their closets, and in private life, may entertain different opinions; but your lordships know, much better than I do, what the strictness of judicial evidence requires. We cannot receive in evidence those things which in private life may convince us of the truth or probability of any fact. I say now, therefore, as I said before, that could the proof of such intention be admitted, as aggravating the lesser offence charged, still there is no proof of the aggravation.

My lord, it may be stated that the circumstances of the times in another country, may afford a proof of the intentions of these men. Upon this it does not become me to speak in this place; but, with regard to the French revolution, I shall only say, that two views

may be taken of it in as far as it respects England.—Those scenes of bloodshed that have been exhibited there, may show us the danger of innovation on the one hand; but the very same circumstances may show us, on the other hand, the propriety of adopting a timely and moderate reform. A delay of reformation, may, as many think, have produced those transactions which we all in common deplore. Some men may be impressed with this event, so as to stifle all desire of reformation. To others, with equally virtuous views, it may appear that this very revolution is an additional argument for obtaining a moderate and timely reform in the representation.—Here again the case comes to be the same as before. Who is entitled to search into this man's breast? He, perhaps, can lay his hand upon his bosom and say, that he viewed the French revolution, as holding out to us a warning not to be too dilatory in obtaining a moderate reform, before the people are stirred up to those excesses which have been committed in France.

The circumstances of the times then which are brought forward to aggravate the offences of these men, may in their own breasts form their justification; because they may consider the French revolution as evincing the necessity and propriety of adopting a moderate and timely reform. Here then I apprehend that no stress can be laid upon circumstances which operate in two ways; which in one view, may operate to criminate this gentleman, and in another view, may be the very proofs of his innocence and virtue.

My lord, setting aside this intention of overturning the constitution, no vestige of a crime remains. Even with this intention, since there has been no commotion, no rising of the people, and since words spoken, whatever may be their purport, can never constitute real sedition, still the only offence is verbal sedition. This has not been a frequent crime; but it is a crime not altogether unknown to our laws. In the records of this court there are two instances of trials for leasing-making or verbal sedition, upon a statute which I shall hereafter have occasion to notice; the act 1703. The offences which were in those cases charged against the panels, I apprehend to have been at least as criminal as those which are laid to the charge of this gentleman.

On February 1st, 1715, John Graham and others * were indicted for leasing making and slanderous speeches, tending to excite sedition, and alienate the affections of his majesty's subjects from his person and government, by setting up the false pretensions of another. The *corpus delicti* was, drinking the pretender's health at the Tron Church, by the name of James 8th, and his happy restoration. This was a crime which was then thought to amount to leasing-making, and accordingly it was tried upon that statute.

Upon the 27th June, in the same year, John Oliphant, Alexander Wilson, William Ramsey, baillies of Dundee, William Lyon, of Ogill, treasurer, and J. Watson, vintner, * were indicted upon the same statute, and the same offence of leasing-making, inasmuch as for abetting the pretender's right, they did go upon the 10th of June (the pretender's birth-day) to the cross of Dundee, and, in a solemn manner, drank his health, by the title of King James 8th, king of those realms; and on the 20th of June 1715, a thanksgiving appointed by parliament for the king's accession, when the bells were ringing, they went up and prevented their ringing, and cursed the king.

I shall leave it to your lordship to decide, whether the crimes of which these men were convicted be not far more atrocious than the offences charged against this gentleman; and at a time too when rebellion raged in this country:—at that very time they were thought to amount to leasing-making or verbal sedition only.

My lord, I now come to inquire as to the punishment to be inflicted. Punishments upon the old acts are prohibited by a passage in the claim of rights, which I formerly read, and shall now read again to your lordships. Having particularly in their view this provision in the bill of rights, the legislature passed the act 1703, chap. 4.]Reads]. "Our soveraine ladie considering that by the acts of parliament following," reciting a number of acts, "the crimes therein mentioned are made capital, and punishable by death and confiscation, and that the saids laws have been liable to streatches, and that in respect of their generality, and the various construction which the same may admit, they may be, as to the foresaid capital punishment, of dangerous consequence, doth therefore, with advice and consent of the estates of parliament, abrogate and discharge, in all time coming, the foresaid sanction and pain of death and confiscation, contained in the said acts; and statutes and ordains, that the punishment of the crimes mentioned shall, for hereafter, only be arbitrary, according to the demerit of the transgression; that is, by fining, imprisonment, or banishment; or if the party offender be poor, and not able to pay a fine, then to be punished in his body (life and limb always preserved)."

My lord, one of the acts repealed by this statute is the act of 1584, chap. 134, where the offence was, as I formerly stated, directly the same as that charged here, that is, declaiming in public against the government of the country. I need not again repeat that declamations cannot be uttered in a desart, where nobody can hear them, or in a private

* See their case in this Collection, Vol. 17, p. 1.

* See their case in this Collection, Vol. 17, p. 763.

room, to a private company: they must be addressed either to such an assembly as this convention, or to the world at large, in the streets, which would have been still more dangerous; and therefore, this act being one of those repealed by the statute of 1703, the punishment of this last statute can alone be inflicted upon the crime.

The question comes then to be what is the punishment enacted by this statute, under the word banishment. With regard to transportation, your lordships know this was a punishment altogether unknown in this country till the reign of Charles 2d. It was then introduced by the privy council, in imitation of what had been done in England, for the purpose of repressing the religious sectaries.

Upon this subject the authority of sir George Mackenzie seems to be decisive: "But with us no judge can confine a man whom he banisheth to any place without his jurisdiction; because he hath no jurisdiction over other countries, and so cannot make any acts, nor pronounce any sentences relative to them." Again, in another place, he says, "As to the sending away people to the plantations. It is answered, that none were sent away but such as were taken at Bothwel Bridge, or in Argyle's rebellion; and the turning capital punishment into exile, was an act of clemency, not of cruelty." If transportation had been a punishment at common law, I apprehend, sir George Mackenzie must have been too well acquainted with that law to think an apology for government necessary. The apology which he makes is, that these men had committed a capital offence, and therefore, says he, the turning capital punishment into exile was an act of clemency and mercy, as otherwise they might have been punished by death. I therefore apprehend, that the punishment of transportation could only be inflicted in the case, that sir George Mackenzie states, or where it is expressly pointed out by statutes or in cases, where the punishment is altogether discretionary, which is not under the act 1703.

The Roman law has, as your lordships know, made a material distinction between banishment and transportation. Under a law authorizing the punishment of *relegatio* merely, the more severe punishment of *deportatio in insulam* could not have been inflicted.

In judging of a matter of this kind, where a statute has expressly declared, that the punishment of these offences is to be banishment, the first thing to be done is, to inquire into the common signification of the word "banishment." My lord, this is not a legal or a technical phrase: the whole world are bound to understand it: and it ought not so much to be referred to law-writers as to common sense, and the etymology of the English language. It is a question of philology, rather than of law; and holding it to be such, I refer to the authority of Dr. Johnson. He gives the following explanation: "To banish, to condemn to leave one's own country;" not a word of sending to another country. The examples given are the words addressed by Macduff to Malcolm:

"O fare thee well!
"Those evils thou repeat'st upon thyself,
"Have banished me from Scotland."

Another signification of the same word is "to drive away:"

"Banish business, banish sorrow,
"To the gods belongs to-morrow."

If your lordships could banish business and banish sorrow along with it to Botany Bay, we should all be much obliged to you.

My lord, with regard to the statute 1703, chap. 4, I apprehend, that by the recital of the acts therein given, there is demonstrative evidence afforded of the meaning of the word banishment. The statute 1609, chap. 9, which is quoted and its penalty partly repealed by the act of queen Anne, 1703, declares that the persons convicted under it "shall be severely punished in their persons and goods, by imprisonment, banishment, fining, or more rigorous corporal pain." At the time this statute was passed, in 1609, it cannot be maintained, and is not pretended, that transportation was known in this country; because this country had then no jurisdiction beyond itself. If banishment, therefore, in the act 1703, signifies transportation, it must be made use of at once, in two different and contradictory senses. In the act 1609, banishment merely means, and can only mean, exile from Scotland. In the other acts recited in the repealing statute 1703, banishment, according to the public prosecutor, means transportation; that is, imprisonment in some foreign country, attended with every thing that is ignominious and painful. The term, banishment, thus, in the act 1703, means, by this construction, both or either of these punishments, altogether different in themselves, and of which we know certainly, that the one was not meant in one of the statutes repealed, and no evidence is brought that it was meant in any of the others. Such a construction is unsufferable. The word banishment must be understood in one simple sense; and that is the sense in which it is employed in the act 1609.

Were it otherwise, the consequences are as absurd as they are dreadful. If the word banishment cannot be employed in two senses in the accurate language of a repealing statute, and if its simple sense be not exile from Scotland, but transportation, then an act, intended, and bearing, to be a mitigation of punishment, would increase, and in an enormous degree, the severity of punishment. The act 1609, repealed for its severity, is rendered still more severe. Transportation comes in place of banishment; and thus the legislature, who, in passing the statute 1703, intended it as an act of mercy, have in reality committed an act of cruelty; instead of les-

sening, they have increased the severity of the punishment which then existed.

My lord, it has been said, that to sentence these men merely to exile from Scotland, would be preposterous, as it would not be an adequate punishment, and because it would leave them opportunities of committing the same offences in England. But if this is a preposterous penalty, I am sure the same preposterous thing is committed twenty times every year by your lordships; for how often is it that you banish thieves and pickpockets forth of Scotland, leaving them at liberty to go to England, where, as people's pockets are generally better filled than they are here, persons of this description will be enabled to exercise their profession with much greater advantage and success? But, my lords, a punishment so well known, in our own law, and in the laws of every country, as banishment, can never be called preposterous.

I stated two trials in the beginning of the present century; John Graham was indicted for "leasing-making, and the utterance of slanderous speeches, tending to excite sedition, and alienate the affections of his majesty's subjects from his person and government; setting up the false and scandalous pretensions of another, by drinking the pretender's health, at the Tron church, by the name of James 8th, and his happy restoration." My lord, there were other persons concerned in this crime besides him; the verdict was, "the crime not proven against Graham and Hay, but found proven against Crawford, upon his own confession;" the sentence was, "that he be emerciated in a fine of 50*l.* sterling, and imprisoned till security found for payment." * My lords, in the other case of "John Oliphant, Alexander Wilson, and William Ramsay, baillies of Dundee, William Lyon, of Ogill, treasurer, J. Watson, vintner, indicted on the statute of Anne, and the acts contained in it, of leasing-making, &c. inasmuch as for abetting the pretender's right, they did go on the 10th of June, the pretender's birth-day, to the cross of Dundee, and in a solemn manner, drink his health by the title of king James 8th, king of these realms; and on the 20th of June, 1715, a thanksgiving appointed by parliament for the king's accession, when the bells were ringing, Oliphant went up to the steeple, and prevented their ringing, and cursed the king."

12th July, 1715.

"The lords justice clerk, and commissioners of justiciary, having considered the verdict of assize, returned on the 5th of July instant, against the said John Oliphant, &c. panels, they, in respect thereof, by the mouth of Charles Kinross, macer of court, deprive the said John Oliphant, &c. of their offices of baillies of Dundee, and the said William Lyon, of his office of treasurer of the said burgh, and declare the said John Oliphant incapable of enjoying any public office or trust within the said burgh, or within that part of Great Britain, called Scotland, in all time coming. And declare the said Alexander Watson, and Mr. Thomas Wilson, incapable of enjoying any public office or trust, within the said burgh of Dundee, in all time coming. And also declare the said Mr. William Ramsay, and Mr. William Lyon, incapable of enjoying any public office or trust, within the said burgh, for the space of three years next after the date hereof. And sicklike, the said lords fine and emerciate the said John Oliphant, in the sum of two hundred merks, Scots, and the said Alexander Watson, in the sum of 100*l.* Scots, and the said Mr. Thomas Wilson, in the sum of one hundred merks Scots money, foresaid, to be paid to his majesty's receiver-general for his highness use: and ordain the said John Oliphant, Alexander Watson, and Mr. William Ramsay, William Lyon, and Mr. Thomas Wilson, to be carried to the Tolbooth of Edinburgh, there to remain until the 10th of August next, inclusive: and the said John Oliphant, Alexander Watson, and Mr. Thomas Wilson, to remain thereafter in the said prison, until they make payment of their said respective fines: and ordain the magistrates of Edinburgh to set the persons of the said Mr. William Ramsay, and William Lyon, at liberty, furth of the said Tolbooth, after the said day: and also to set the persons of the other three panels at liberty, after elapsing of the said day, upon producing their respective discharges of the said fines, which is pronounced for doom."*

In these cases your lordships will observe, that an enormous offence had been committed against the government; and you have heard the punishment that was inflicted; whether it was, or was not equivalent to the offence, I leave entirely to your impartial consideration. But, my lord, certainly the circumstances of the times then were at least as dangerous as the present. Actual rebellion followed, and many unfortunate men fell in the contest. If any circumstances could justify the extreme severity of a sentence they were those which then existed. But all that it was thought necessary to do then was, to inflict the small punishment which your lordships have heard. I may also notice, that in the last of these cases, the panels had been convicted of two offences, leasing-making, and a malversation in office as magistrates. Being thus guilty of two crimes, the accumulated punishments of fining, deprivation, and imprisonment were inflicted upon them.—

Having said so much, I shall now conclude. Before sitting down I must yet mention one consideration personal to this unfortunate gentleman himself. His state of health is feeble, and in regard even to this there ought

* See Vol. 17, p. 30.

* See Vol. 17, pp. 780, 782.

to be some measure of the punishment. Should he reach his place of exile, his punishment will indeed be severe. A man of high talents, of a cultivated understanding, is to be condemned to the communion of thieves and villains, the refuse and dregs of the human race! In such society he is to be sent to the desolate shores of the remote southern ocean. From those hapless regions it may, perhaps, be possible to return; but from his state of health it is highly probable that this gentleman will never even arrive at his miserable destination. His sentence of exile will have been to that "undiscovered country from whose bourn no traveller returns."

I know that the humanity of your lordships will make you pause before you pronounce a judgment of which such must be the consequences.

Lord Justice Clerk.—Mr. Gillies, you have done ample justice to your client; you have managed his defence in a very able manner.

Mr. *Montgomery.*—My lord, after the very able and full discussion which this question underwent a fortnight ago, not only by your lordships, but by the counsel on both sides, I should consider myself much to blame were I to consume a great deal of your lordships time, by entering at large again into the field of argument then stated, because I feel myself incapable of giving any additional illustration or adding weight to the argument then so ably stated by the solicitor-general.

My lords, the counsel for the panel has endeavoured to maintain before your lordships a variety of propositions, all of which it is incumbent upon him to make out before his client can derive any benefit from them. The first was, that this libel was too general, that it includes verbal sedition, and that therefore such a general indictment ought not to be found relevant to the knowledge of an assize. It is very true both verbal and real sedition are known to the laws of this country; but it is not from the major proposition alone that he is to learn which is meant to be charged; but he is to look to the minor proposition, and if there is such a thing existing in the law of this country as real sedition, he will there find it.

His next proposition is, that if this indictment is not on account of its generality to be laid aside entirely, it must be presumed that simple sedition, or leasing-making, only is the crime laid, and that your lordship in the interlocutor would so find it; and he instanced the case by an example which I should have taken to prove the contrary; for it is very well known, that, for the crime of theft, either a capital or an arbitrary punishment may be inflicted. The usual mode of laying indictments is the same, that the crime is of a heinous nature, and severely punishable; and from the minor proposition you are to learn whether it is such a crime as will infer an arbitrary or a capital punishment.

My lords, he has stated three different propositions: in the first place that there is nothing criminal set forth in the indictment, and that therefore it ought to be dismissed entirely, because it contains nothing upon which punishment can be inflicted.

In the second place, that if there is any thing criminal, it can only amount to leasing making, which infers a smaller punishment, and not to real sedition, which infers a greater punishment.

And the object of both these propositions was, to make way for the last and main object, namely, to show that under the term banishment in the act 1703, exile from Scotland, only, and not transportation was intended.

My lord, with regard to the first, that there is nothing criminal charged in the libel, I should think it an indignity offered to your lordships, and to the jurors who tried the former cases, and found those persons guilty, to take up much time in proving that it contains matter highly criminal, and deserving of very great punishment. Mr. Gillies asked if there was any thing wicked, if there was any thing seditious, or if there was any thing criminal in using the words *ça ira*, or in using French terms in this convention, unless the object of their meeting was criminal.

My lord, in order to judge of the criminality of this libel, I apprehend we should lay the whole of the facts together, and I will appeal to the understanding of every man, whether he can figure to himself a more flagitious crime than that charged against the panel; namely, joining a conspiracy against the government of this country, which they have endeavoured to promote to the utmost of their power. Using French terms *vive la convention, ça ira*, Liberty Hall, Liberty Stairs, and so on, as general circumstances, go to prove that the panel at the bar, with other persons, have met for the detestable purpose of overturning the constitution.

My lord, my brother has endeavoured to take off the effect of this most extraordinary declaration, which those gentlemen were not satisfied with simply resolving, but thought necessary to bind themselves to the performance of, by an oath. He says, in arguing the relevancy, they made this resolution no doubt, but the act, the passing of which they meant to oppose, has not yet taken place, and therefore it is no crime. That is not the fact here stated. The charge here stated, is an attempt to intimidate the government of the country; that if a law passed, which they foresaw must pass, if their operations were not put an end to, they are declaring and binding themselves, that if such an act passed, they would still continue to meet, to introduce annual parliaments and universal suffrage, till such time as they were compelled to desist by superior force. The gentlemen say, that their object was merely to bring it about by peaceable means.—Is it by peaceable means that they intend to do it, when they tell you that nothing will prevent them but

superior force. Is that peaceable means? Is that the language of a man who means to remonstrate? No; it is held out as a threat against the government of the country, daring them to do an act which they know must crush their proceedings.

My lords, my brother has gone on to subsequent resolutions, and one instance he gives, that they had only peaceable objects in view; that they were not to meet after the act was passed, but that they were to act immediately upon the first notice given of a convention-bill; that their object was, to procure a number of subscriptions, in order that they might go up to parliament with such force as to prevent the possibility of miscarriage. That is his argument, and ingenious it may be, were it not contradicted by circumstances. From the indictment your lordship sees, that the members of this convention are to be entrusted with a sealed letter, to be given to their constituents, containing the name of the place in which they are to meet in secret, which themselves are not to know, much less the vast number of persons whose subscriptions they are to get; and that is the mode which is to have the effect of preventing, or rather of resisting the execution of this act.

My lord, it is farther said, that they had another object in view,—the resistance of an invasion; and that this letter must be understood to have applied to a meeting of the convention for that purpose. A very likely story, that a meeting of seven, being all that was required to declare their meetings permanent, or at most twenty-one, that such a meeting was to resist, far less repel an invasion made upon this country. My lord, I apprehend nothing farther need be said with regard to the criminality of the charge as stated in this indictment. My lord, the gentleman himself has given sufficient evidence, that they were not to meet for the purpose of petitioning parliament, which is legal and constitutional, and there are meetings for that purpose which are attended by people of the greatest respectability. But this seems not to be their object; for the gentleman himself says, that this measure of theirs may be thought by some a bold, by others a daring measure. Did the gentleman mean, when he said this, that the people were to believe that the object they had in view, was merely to petition parliament? No; and he could not have described it in more emphatical language, which, I am sure, every person who hears it will feel highly applicable to the proceedings of the British convention.

My lord, with regard to the next proposition, namely, that this is leasing making only, and that the act 1703, should have been specially libelled on, my answer is very short—that it is not leasing making, but real sedition; a crime well known to our laws long before the existence of any statute. Every lawyer who has treated upon the subject, has not only made a distinction between leasing making and real sedition, but between real sedition and high treason.

My lord, much, no doubt, may be said with regard to the definition of real sedition; for, from the great variety of shapes which this crime may assume, and the various degrees of guilt which the actors incur who commit these crimes, it is absolutely impossible to give any just definition of the crime, so as to comprehend every possible case; but there are to be found treatises in the criminal law which point out a clear distinction, and show that the charge here laid comes within the crime of real sedition.

My lord, I will beg leave to read the definition of Erskine—the first I shall read is in his small compend. He says, "It consists in raising commotions, or disturbances in the state; it is either verbal or real. Verbal sedition, or leasing making, is inferred from the uttering of words tending to create discord between the king and his people. It was formerly punished by death, and the forfeiture of goods, but now, either by imprisonment, fine, or banishment, at the discretion of the judge. Real sedition is generally committed, by convocating any considerable number of people, without lawful authority, under the pretence of redressing some public grievance, to the disturbing of the public peace."

My lord, in his larger work, he says, "The crime of sedition consists in raising commotions and disturbances in the state. It is either real or verbal. Real sedition is inferred from an irregular convocation of a number of people, without lawful authority, tending to obstruct or trouble the peace of the community. Such commotions as are aimed directly against the sovereign or state, amount to high treason; but where they are raised merely to address some supposed grievance, it is the crime which falls properly under the term sedition." In like manner a small book, noticed formerly by one of your lordships, Bayne, says, "Sedition is an irregular commotion of the people, or convocation of a number of citizens, assembled without lawful authority, tending to disturb the peace and order of society." Is not this the very crime here stated? I apprehend, what has led my brother into an error, has been the confounding of the different senses of the term commotion. Commotion, in an enlarged sense, may no doubt signify a rising in arms against the government of the country; but, in another sense, it may signify an illegal convocation of people, without lawful authority, tending to disturb the peace and order of society. I say, if it was otherwise, there could be no such thing as real sedition; because, the moment, according to them, that it becomes real sedition, it ceases to be sedition, it is high treason, not only by the treason laws as they now stand, but is clearly high treason in the old treason laws. Therefore, I apprehend, the distinction between real sedition, and verbal sedition, is perfectly obvious. It is not

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necessary, in order to constitute real sedition, that there should be a rising in arms; for the moment there is a rising in arms, it ceases to be sedition. Leasing making, on the other hand, implies this, and no more, the uttering or speaking, either in convocations, or spreading by means of libels or hand-hills, any wicked, false, scandalous speeches, which tend to introduce jealousies among the people, and to overturn the state. But sedition may exist without uttering any scandalous and false speeches; as, for instance, when this gentleman declared and bound himself by an oath, to resist any act that might pass to prevent the meeting of this convention—this was not a false speech; it contained, in a melancholy truth, that these people set themselves up in defiance of the law of the country, and declared they would not desist from their wicked proceedings till they were compelled by superior force.

My lord, it is not necessary to look to our statute book, for the exact definition of sedition, or when it was first introduced into the law of Scotland; for it has been well observed, by all of your lordships, that it must have existed, not only in this, but in every country; that it is coeval with the existence of society itself, because it is impossible that any country can exist, if the crime of sedition be allowed to pass without any punishment at all. In the law of Scotland, it existed for many generations, before it became the object of statute law, till the punishment applicable by the common law was not sufficient to restrain the vices and wickedness of people; and then acts were made only regarding these particular species of sedition which appeared to be most criminal, and which appeared to be most levelled against the government of the country. At that time it never occurred to the justice of the legislature, and it would have been unjust if it had, to have framed an act so comprehensive as to include every species of crime, which could fall under the term of sedition, because they must have known that it is a crime, not only infinite in its variety, but also infinite in its degrees and shades of guilt. Particular acts of sedition were declared to be capital, and with respect to some of them, I must call your lordships attention, for they contain a particular specification of the crime here charged; and had this gentleman been tried, prior to 1709, when the old treason laws existed in this country, he must have been tried for high treason, and punished with death.

My lord, the first of these statutes was stated by the solicitor general, when he first argued the case to your lordships, 1584, ch. 130,—"Therefoir it is statute and ordained, bee our said soveraine lord, and his saidis three estaites in this present parliament, that nane of his lieges and subjectes presume or tak upon hand to impugne the dignitie and the authoritie of the saidis three estaites, or to seek or procure the innovation or diminution of the power and authoritie of the same three estaites, or ony of them, in time cumming, under the paine of treason." Does not this gentleman, I would ask, impugn the dignity of the estates of parliament, when he says, that they would pay no regard to the wisdom of parliament, and that they would continue to meet till such time as they were compelled to desist by superior force?—and he does not content himself with that, but justifies their doing so upon the laws of God and right reason: he says—"If such a law were suffered to pass, if men were not allowed to utter their complaints, a number of fierce and rancorous passions would arise, and we would seek to appeal to that last terrible decision, the event of which is uncertain, but which God and nature allow." Here the gentleman is not only saying, but binding himself by an oath, that if the legislature should enact a particular statute, they would resist it, by continuing to meet, till they were compelled to desist by superior force. Here they are telling the whole country, that their resistance is sanctioned by the laws of God and the laws of reason. I apprehend it to be clear, therefore, that if he had been tried prior to that act, he must have been tried and punished for high treason, according to the statute I have now read, which inflicts the punishment of death. But, my lord, there is another act applicable to the present case; it is the act of 1662, ch. 2,—"An act for the preservation of his majesty's person, authority, and government. And since the rise and progress of the late troubles, did, in a great measure, proceed from some treasonable and seditious positions infused into the people, that it was lawful to subjects for reformation to enter into covenants and leagues, or to take up arms against the king, or those commissioned by him, and such like;" and so on, till it comes to the following enactments: "Like as his majesty and estates of parliament, reflecting on the sad consequences of these rebellious courses, and being careful to prevent the like for the future, have therefore statute and ordained, and by these presents statutes and ordains, that if any person or persons shall hereafter plot, contrive, or intend death, or destruction, to the king's majesty, or any bodily harm tending to death or destruction, or any restraint upon his royal person, or to deprive, depose, or suspend him from the style, honour, and kingly name, of the imperial crown of this realm, or any others his majesty's dominions, or to suspend him from the exercise of his royal government, or to levy war, or take up arms, against his majesty, or any commissioned by him, or shall entice any strangers or others to invade any of his majesty's dominions, and shall, by writing, printing, preaching or other malicious and devised speaking, express or declare such their treasonable intentions, that then these persons are to suffer death, as in cases of treason." Have not the gentlemen ex-

pressed, in the strongest terms, and bound themselves by oath, that they would resist the government, and that they would resist it by force? And they justify force by the laws of God and reason. Is not this then an intention of levying war against the king? therefore, if the gentleman had been tried upon this statute, prior to the statute of 1709, he might have been punished as a traitor; because he has declared his intention to be, to make war against the government, till superior force compelled them to desist. If the gentleman had been tried, even after the passing of the act 1703, and before 1709, he must have been tried and punished as a traitor. And, my lord, what effect is the introduction of the treason laws into this country to have? Are these acts of sedition, of such an aggravated nature, as are declared treason by law, not to be liable to any punishment whatever? for, my lord, admitting that there is no such thing as real sedition, then, I say, the act of 1703, give it the widest range possible, never can reach those acts of sedition, which were declared treason by former acts. But, my lord, the natural consequence of the operation of the treason laws of England coming into this country, is, not to have the effect of leaving these crimes without punishment at all, but leaves them exactly in the same situation in which they were before this act of parliament was introduced; and your lordship is intitled to punish, at common law, as your lordship would have done if the case had been tried prior to the passing of these acts.

My lord, if I am right in this position, that this crime is real sedition, and that falling under those acts it might have been punished as treason, it is matter of very little consequence what is meant by the word banishment; because, in the first place, I apprehend this case is not leasing-making, as I have endeavoured to show your lordship: but suppose the case were leasing-making, I am not bound, in this case, to lay the libel upon the leasing-making statutes; for, although it was well observed by all your lordships, that where an act creates a crime, and specifies the punishment to be annexed upon the conviction of such a crime, we must apply the statutory punishment, yet, my lord, it often happens, that acts of parliament are introduced where the crime existed at cotamon law before; and, in these cases, whether the acts introduced a higher or a lesser punishment, unless the act specially takes away the crime at common law, specially deprives you of the jurisdiction inherent in this court, of trying at common law, there is no occasion for laying the libel upon that statute. Your lordships know, when the crime is made greater, I may charge it either upon the statute or the common law; and it often happens, that the object of the statute is, to give jurisdiction to a court that it had not before, or to introduce a more summary mode of punishment; and, in that case, unless the act declares that you are not to try at common law, it is not to be presumed that the common law power is taken away. For, in the case of bribing excise officers, though it is punishable at common law, there are statutes imposing severe fines; and your lordship will recollect, in the case of Mr. Stein, for bribing Mr. Bonar, it was strongly urged, that as the act introduces the punishment of severe fine, you are not entitled to disregard this act, and go to a trial at common law, but you must lay the libel upon this statute, and confine yourself to the punishment inflicted by that statute; but it was held, that your lordships common law powers are not taken away, and therefore you are entitled to try and punish that gentleman at common law.

My lord, I may exemplify this case by an instance which has been introduced by my brother; in pleading this case, he mentioned the case of several people tried upon the leasing-making statutes. Those persons were not tried upon the leasing-making statutes alone, for they were tried upon the laws of God, and upon the laws of this and every other well-governed realm. I will also refer the gentleman to another case, in 1712, when the party tried, and the able counsel who defended him knew perfectly well, the meaning of the word banishment. His indictment is laid upon the act 1703, and is also laid upon the laws of God, and of this and every other well-governed realm. The counsel for that gentleman pleaded a variety of objections to the relevancy of that indictment; but it never occurred to the gentleman to state, that it was not competent for the court to try him both upon the common law of this land, and upon the statute law. My lord, it never occurred to him that the punishment was different by the common law; they never asked your lordships to dismiss the indictment, because it was laid upon both laws, nor did they argue that your lordships ought to define and declare to the jury, that the term banishment, in this act, was exile, and not transportation:—No such thing; and it cannot be supposed that it was through ignorance, for they were men learned in the law, and living at the very time the acts were made.

My lord, this, in my mind, affords a strong argument, not only to show that an indictment is relevant at common law, although an act of parliament has been introduced, making it a crime, and stating a particular punishment, unless that act destroys your lordship's power at common law: it goes to show, that under the word banishment, transportation is likewise included, or the gentlemen would certainly have insisted upon so material a thing for the safety of their client.

My lord, this leads me to take notice of the last proposition, which is the main object of the whole argument in this case, namely, that exile, or banishment from Scotland only, ought to be the punishment.

My lord, I will not follow the gentleman into dictionaries to look for the term; and the one that he has found does not seem to afford him any assistance. But, if I can show that transportation was considered as included in the term by the lawyers of the times, and by historians of the times, there is an end of this question; for, independent of the various sentences which were read to your lordships upon the last occasion, and which I shall not consume your lordship's time by reading again, from the books of adjournal of this court, not only prior to the passing of the act 1703, but down to 1756, when the punishment of transportation was introduced, I shall refer your lordship to the sentences of the court of session, which show that they understood banishment in the very same sense; and prior to 1756, there are a variety of cases which show, that from the incidental jurisdiction they had in the punishment of forgery, they are entitled at common law, without the aid of any statute, to send people to the plantations; and the uniform form of the sentence is in these words, "ordain that he be carried back to prison, there to remain till an opportunity offers of carrying him to some of the plantations in America, there to be banished for ever." In some cases it is banished for ever, in other cases, for a certain number of years.

My lord, I might also resort to the historians of the times—I will read to your lordship one passage from Guthrie's History, which clearly shows that he understood transportation to be included in the word banishment. Immediately after the execution of the duke [earl] of Argyle, in 1685, Guthrie, speaking of what acts of parliament had declared, says, "they declared their abhorrence and detestation of all resistance, upon whatever pretext, by deed, word, or writing; and, at last, they passed an act to approve whatever had been done by his majesty's privy council, justice court, and those commissionated by them in banishing imprisoning or fining such as refused to take and swear the oath of allegiance, and to assert the royal prerogative in their utmost extent."

Your lordship knows, that in this reign, and in the reign of his brother Charles 2nd. a number of unfortunate people, because they would not subscribe bonds of peace and the oath of allegiance, were sent by the privy council to the plantations, by ship-loads; and also a number of conventiclers were remanded back to prison, till an opportunity should be afforded of transporting them to Barbadoes, where no less than eighty of them were lying for transportation. The king would never ratify a deed of the privy council, who banished a man from his dominions in Scotland to his dominions in England, because he would not swear the oath of allegiance. It is perfectly well known, that hundreds of our fellow-citizens were sent in those days to the plantations. My lord, I do not read this as an example for imitation; no man can justify such arbitrary proceedings; but no man, I am sure, was ever sent from Scotland to England, because he refused to take the oath of allegiance. I will say there is no instance of such a case to be found; they were all sent to the plantations; and, then your lordship sees this author, when speaking of those transportations, makes use of the word *banishing* only; and therefore, it is very clear that his idea of the word was the very same which I am now contending for before your lordship, namely, that the word banishment is a general term; that transportation is only one mode of carrying it into effect, and that under the term banishment, transportation was intended by the act 1703.

My lord, independent of that, I might ask your lordship, is it natural to suppose, if it was their intention under this act, that no man should be transported, that they would have made use of the very term which this Court have uniformly used when they inflicted the punishment of transportation. No, my lord, the very reverse is the natural supposition. Besides, I might state to your lordships, that the object of the legislature was merely to take away the capital part of the punishment; that is perfectly clear from the words of the act itself. It says, "that in respect of their generality, and the various construction which the same may admit, they may be as to the foresaid capital punishment, of dangerous consequence, doth, therefore, with advice and consent of the estates of parliament, abrogate and discharge, in all time coming, the foresaid sanction and pain of death and confiscation contained in the saids acts; and statutes and ordains, that the punishment of the crimes therein mentioned, shall for hereafter only be arbitrary," and then enumerates the punishment of banishment, fining, and imprisonment, which were the common law punishments then in use. My lord, I beg leave to refer your lordships to the act 1701, where the power of transportation by this court is expressly recognized. "As also that no person be transported furth of this kingdom, except with his own consent, given before a judge, or by legal sentence." I would ask the gentleman where is the legal statute which authorizes transportation?—I may, perhaps, be told, that the act 1670 authorizes transportation, because they were to be banished to the Indies; but I will remind them, that that act was rescinded in 1690, the second act of the second parliament of Charles 2d. Here is the only act which mentions the banishing a man to the plantations, rescinded in 1690; and yet, in 1701, we find an act expressly recognizing the power of transportation; because it says, that no man is to be transported but by his own consent, or by legal sentence. Where then is the statute that authorizes transportation? I say there is no such thing; and

therefore it is clear that it is included in the term banishment, otherwise there can be no legal sentence of transportation. The gentleman says, that by the act 1703, banishment is to be understood; and when an act enumerates banishment, fining, and imprisonment, that you are not to enlarge those, or introduce any other punishments which are not there specifically mentioned. I should be glad to know what explanation they are to give of the last clause of the act 1670, with respect to their refusing to depone as to conventicles. The object of that act was to discover meetings of conventiclers, and to declare the punishment to be inflicted upon those who should refuse, when called upon, to say what they knew respecting these conventicles; the punishment is to be fining, close imprisonment, or banishment. The legislature foresaw that when the man was called upon to declare what he knew, he might include and blame himself by so doing, and therefore it was thought necessary to enact a clause freeing him from the punishment, and therefore it was provided, that no man's declaration against any other person should infer against himself the loss of life, or limb, or banishment.

My brother has told your lordship, upon the authority of sir George Mackenzie, that banishment by transportation was illegal, because it is impossible to confine a man to any place to which he is banished, as though your lordship had a jurisdiction over him while he is in that place undergoing the sentence of banishment; but that is not the case, for from the moment that he has once landed, your lordship has no farther authority; you are not confining him there; he may go where he likes, provided he does not return to this country. My lord, he has also appealed to another passage in Mackenzie, to show that this was an illegal sentence, in his justification of the reign of Charles 2d, where it is said, that people were sent abroad from a principle of mercy, because these people might otherwise have been punished by death; and, my lord, it is very true as applied to those people who were taken at Bothwell bridge in 1679; because historians tell us, that about 1200 of them were taken with arms in their hands, and in open rebellion; it was therefore mercy to send them abroad and not try them for their lives; but it was only those persons who refused to subscribe declarations that by the act 1670 were to be sent abroad, and the privy council had an express power of sending them to the plantations.

My lord, it is a mistake to say, that sending people to the plantations was for the first time only introduced at the time of the rebellion at Bothwell bridge; for all those who were taken a great many years before, at the rebellion which was crushed at the Pentland Hills in 1667, I think, were sent there likewise. And if your lordship reads the history of this country prior to 1660, you will find a variety of instances where people were sent to the plantations for refusing to subscribe bonds of peace, and refusing to take the oath of allegiance. When was the first time it was introduced into this country, I know not; however, I know from history, that it was not upon the passing of that act 1660; because, my lord, I read of ship loads of unfortunate people having been sent away, who thought it inconsistent with their duty to subscribe bonds of peace. My brother has referred to the act of 1609, which mentions banishment; and his argument is that transportation could not have been intended, because transportation was unknown in those days, and therefore it appears singular that the act 1609, when repealed by the act 1703, on account of the severity of its sentence, should have enacted a punishment much more severe than the former. Upon what foundation or authority the gentleman says, a person could not have been transported under the act 1609, I am at a loss to discover; for they had just as much a power, and just as much an opportunity of transporting in 1609 as they had in 1660, when I know a great many transportations took place.

My lord, I see no reason why transportation could not have been indicted under in the year 1701, as well as 1660. But I will read to your lordship the last clause of the act 1609. "And nevertheless, finding therein sik malicious letts as the devile and his supposts do usually suggest to the hindrance of all just and godlie interpryses, specially, by the false and calumnious brutes; speeches, and writs, craftelie uttered and dispersed by some lauless ond saulles people of this realme, as well in privat conferences as in their meetings at taverns ail houses and playes, and by their pasquills, lybels, rymes, cockalans, commedies, and siklyke occasions, whereby they slander, maligne, and revile the people, estaite, and country of England, and divers his majesties honourable counsellers, magistrates and worthie subjects, of that his majesties kingdome. The continuance whereof being able to incense the people of England to just grief and miscontentment, may not only hinder the intended union of all the good subjects of this monarchie, but stir up in them sik irreconciliable evil will, as with time might bring forth maist dangerous and harmful effects."—Can your lordship believe, that as a punishment to men who had produced such irreconcileable hatred between the two kingdoms, this act intended that they should be banished into England, where they would have a much better opportunity of completing their purpose than they could have in Scotland. I am perfectly sure a judge would have been laughed at who had sent such a man into England. I am satisfied that no sentence ever was passed upon this act. It was an act passed by Scotland, under the impression that England would pronounce a simi-

lar judgment. In evidence of this I shall read to your lordship what sir George Mackenzie says. "But, in my opinion, this act reaches only such as speak reproachfully of their nation, country, and counsellors; but the whole act ought to be abrogated by our parliament, as being past by in expectation that England would make such an act in their parliament, which they never did; and upon which account, it was never in observance with us." I am perfectly satisfied that if this act had ever been put in force, if any sentence had ever been imposed, it must have been transportation.

My lord, I do not feel it necessary to trouble your lordship any farther, neither of the positions laid down by my brother being applicable to the present case, because it is not leasing making, but sedition, so near the crime of treason, that by the ancient treason laws of Scotland, it would amount to treason. The act at common law remains in full force, and I am perfectly clear, whether you take the intention of the legislature, or whether you take the words themselves as explained by historians, by the legislature itself, and by the sentences of this court and the court of session, your lordships cannot have a doubt, but that under the act of 1703, you have it in your power to send this gentleman, or any other who may be found guilty of sedition, to transport him beyond seas.

Lord Justice Clerk.—Mr. Montgomery, you have gone into it very ably and very fully.

Mr. *Solicitor General.*—My lords, the points which you have now heard debated, are points upon which I have made up my mind most fully, and which I should not be afraid to argue in any court, in any place, or against any opponent. But, my lord, when I consider that this matter underwent a very full discussion this day fortnight, and when I consider that your lordships then heard these points stated with all the ability which the bar could furnish (and I cannot suppose that your lordships have drank so deeply of the waters of Lethe, as to have forgot what passed upon that occasion), I think it unnecessary to trouble your lordship with many words, more especially as so much justice has been done to it, by the gentleman who has already spoken.

My lord, as to the first point, whether there is such a crime known in our law as that of sedition, I shall not say a single word, because no person who knows any thing of our law can entertain a single doubt.

The next point is, whether the facts charged in this indictment do amount to the crime of sedition, yea or no? and after what we have heard so fully discussed, and after what your lordships have determined upon the subject, I cannot suppose that any argument is necessary upon this branch of the subject.

My lord, you have been told that all the crime which this panel has committed, is the entertaining ideas favourable to universal suffrage and annual parliaments, and in which ideas he was sanctioned by the most respectable names. My lord, whatever opinions those persons may privately entertain, I have no opportunity to know, but I beg leave to ask of the counsel on the other side, who, I dare say are better informed than I am. Have Mr. Pitt and the duke of Richmond ever formed any convention in England? Have they ever called themselves the British Convention? Have they ever called themselves the representatives of the body of the people? Have they ever told the parliament of Great Britain, that they shall not presume to disperse them? Have they ever told them that if they dared to bring into parliament a certain bill, they will resist it by force? Or have they told the public, that in case of an invasion, they will meet in a secret place? If they have done so, it has been unknown to me, and if they have, it says very little for those to whom the criminal laws of England are entrusted, but as far as I know, no such thing has ever happened.

My brother Gillies, who pleaded the cause with very great ability, told your lordship, that even if the facts stated were proved, as well as the criminal intention (which I admit is absolutely essential), that in that case, the libel ought not to be sustained as relevant, in so far as the charges amount to high treason. Now, my lord, I will so far agree with my brother, that in making out this charge before the jury, it will be necessary for me to satisfy them that he had a criminal intention: and if my brother can show me that the facts charged in this indictment do come within the treason act of Edward 3d, we shall very soon make a short argument of this case, because I shall immediately desert the diet.—We shall have no more trial upon this indictment, but I shall immediately apply to your lordships, that that gentleman be committed for high treason. It is a thing I have fully considered, and I am perfectly satisfied. I have no doubt of proving the intention, of which the jury will judge, and that they amount to something which is very near treason, the most aggravated species of sedition that can be imagined.

My lord, the only other point for consideration relates to the degree of punishment which your lordships have power to inflict, supposing the crime to be proved. Now, my lord, I apprehend it is perfectly well established, that banishment by transportation, which I say is a particular mode of banishment, is known to the common law of Scotland; it was a power exercised by the court of session without a statute, and exercised by all the criminal courts in Scotland. When this practice was first introduced, it is impossible for me to say; but, I believe, much earlier than is generally supposed. It is sufficient for me to state, that transportation is known to the law of Scotland, and is acknowledged and recognized in the fullest manner, by the act of 1701.

The question therefore is, whether your lordships, in judging of the crime of sedition, are restrained from inflicting that punishment, supposing it to be a legal one. I must first show it to be a legal one, and then, whether there is any statute which restrains the power of the court; and this leads me to consider the act 1703, which is the single act that the gentlemen found upon, as limiting the power of the court; and, upon this statute, it is necessary for me to say very little. Upon looking at the enacting clause, it appears to me, that the only purpose of the statute was, to take away the capital part of it. It is very true, the act says that the court shall inflict the punishment by fine, imprisonment, or banishment; and my brother tells your lordship, that there is a very material difference between banishment and transportation; and he shows your lordship from Johnson's Dictionary, Shakespeare, and other respectable authorities, that banishment and transportation are different things; but I take it to be a very clear point that in judging of the statute law of Scotland, we are not to go to an English dictionary, or to poetical writings—there can be but one authority, which is neither more nor less than the language of the common law of Scotland; and where are we to find it? We are to find it in the records of this supreme court; search has been made in those records, and by that search it is made clear, I should suppose, beyond the possibility of contradiction, that according to the law language of Scotland, before the statute, at the time of the statute, and after the statute, banishment did include transportation.

My lord, instances were pointed out to your lordship, which it will be unnecessary to repeat, because it is impossible that they can be forgotten, in all of which your lordships inflicted the punishment of banishment; and, in order to carry that into execution, you ordain and appoint the persons to be banished beyond seas.

My lord, I shall beg leave to mention one case which has not occurred* before, and that is a case which happened in the month of February 1704, which your lordship will observe, was just five months after passing the act upon which the gentlemen found, the act of 1703, having been passed in the month of September, and this case was determined in the February following. It was a case which occurred before the privy council of Scotland, which your lordships know was at that time a court invested with a jurisdiction of a very considerable extent. It was a trial for leasing making (the very crime upon which the gentlemen found their argument), upon the 4th of February 1704, a libel against a Mr. David Baillie,† brother to captain Robert Baillie of Manor-hall, for leasing making, and the conclusion of it, after setting forth the fact is, that the aforesaid David Baillie, ought to be severely punished for the same, with the pains of law, at least conform to the 4th act of the last session of the current parliament, intituled "act anent leasing makers and slanderers." Here your lordship sees this libel specially refers to the statute 1703, and prays, upon the party being convicted, that he should be severely punished for the same, with the pains of law, at least conform to the 4th act of the last session of the current parliament. My lords, this was tried before a court who did not sit at the distance of ninety years, but who sat within five months after the act passed; and therefore it is natural to suppose, that they understood its meaning; and my lord, I observe by the sederunt, that the president of the court of session was there, the lord justice clerk was there, and many other of the judges, and therefore it is impossible they could mistake its meaning. In the first place, the party acknowledges the offence; and, therefore, there was no need of any trial as to his guilt; and, in the next place, he was assisted by no less than six able counsel, and a great deal of argument there was upon it—but when you come to the sentence, "the libel having been found relevant to infer an arbitrary punishment, that the two letters libelled on were all his hand writing, the court hereby ordain and adjudge, that the said David Baillie be transported to the West Indies, that he be set in the pillory from eleven to twelve in the forenoon, and in case the person cannot pay the fine, to be transported, and to be kept in the prison of Ayr, until he be so transported."

My lord, I know very well that it is not the fashion of the times, to think a great deal of our ancestors; but I shall admit, that in point of wisdom, in point of philology, in point of philosophy, and many other fine speculative ideas,—I will admit that our forefathers were by no means comparable to us in those fine theories which modern philosophy has found out with regard to religion and government; witness the glorious state of France at this moment. But, my lords, can we understand that act better than they did? Did not they know their own meaning better than we do? And yet your lordship sees the judges who sat in that very parliament, within five months after sitting in a court of justice, upon a case in point, they understood the meaning of banishment, and they transported him to the West Indies. And, my lord, this is not all, I see, at this time, the gentleman was not undefended, he was assisted by six able counsel, and not one of them

* So in *Orig. Edit.*

† In the appendix to the original edition of Gerrald's trial some account of David Baillie's case was inserted; but having been already printed in Vol. 14 p. 1055 of this Collection, it is here omitted. The sentence passed upon Baillie by the privy council will be found in Vol. 14, p. 1053.

pretends to say he had the smallest doubt about it; they argued many points of law, but this was not so much as mentioned, it was clear beyond the possibility of doubt that it included transportation. I cannot have a doubt, but that your lordships, upon the fair construction of this act, have the power, in case this panel should be convicted by the verdict of a jury: but it will be with your lordships to judge whether you think he merits it or not. This is a complete answer to the two cases the gentlemen has cited. The act does not bind you to transport, but it is an arbitrary punishment in the discretion of the court; and, in the present case, it will be with your lordships to judge whether you think the extent of the crime merits such punishment. Your lordships can have very little doubt about the matter, and, I think the proper time for that determination, would be after the verdict of the jury.

Mr. *Laing*.—My lord justice clerk. By your lordship's appointment I have undertaken a cause which I at first declined, not only from personal considerations, which I forbear to mention, but because my recent avocations have been very different from the pursuits of this bar. The cause of my client, though undertaken by your order, is now my own; and I will plead for him, as I would for myself, were I placed in his situation at the bar. No considerations shall now deter me, nor shall the fear of obloquy relax my efforts to establish his innocence, and overturn the preposterous charges of this indictment.

The arguments maintained on the relevancy may be reduced to three propositions, to which, whatever illustrations or additional arguments my recollection and my strength may enable me to contribute, shall be specifically directed.

1. That the facts charged in the indictment are not of a criminal nature; or, if criminal, that they constitute merely a statutory offence.

2. That where the crime is provided for by statute, a severer, or a different punishment, cannot legally be inflicted at common law.

3. That the punishment of the facts charged in the indictment, if indeed criminal, are, as regulated by 1703, ch. 4, fine, imprisonment, or banishment; meaning thereby banishment forth of the realm alone.

1. My lord, on the first proposition, that the facts charged in the indictment, if criminal, constitute a statutory offence, the argument of the prosecutor amounts to this, that sedition is a technical or generic term, comprehending a variety of different crimes; yet unsusceptible, at the same time, of a definition applicable to every crime. That there is no definition of sedition strictly applicable to each case, I shall readily admit; for the definitions given by our lawyers are founded on a previous distinction between real and verbal sedition. The former is uniformly described as an actual commotion, or rising of the people; the latter, the utterance of false reports, or the publication of writings tending to excite such commotions, or to overturn the established constitution or government. My lord, this is not an ideal distinction; it originates from the very nature of crimes; from the difference between the attempt and the deed; from the necessity of distinguishing between what is actually committed, and that which is perhaps an abortive attempt to effect the deed. In murder, a conspiracy against our neighbour's life, when carried into execution, must be distinguished from an attempt to instigate another to the commission of murder. So in perjury, subornation of evidence is a crime of a very different complexion from perjury itself. Here, then, is a distinction never to be removed from the nature of crimes; the intention alone does not constitute the crime; unless it is carried into execution, it cannot amount to the crime which it failed to accomplish. This distinction is also founded in the nature of crimes against the state, which, I observe, are all reducible to sedition, to treason, and to verbal sedition. Whatever tends to the destruction of the state, may be termed sedition: but there are acts of sedition exalted to treason, ennobled on account of their dangerous consequences, and punished as treason, by attainder, forfeiture, and a rigorous death. Sedition itself is a popular commotion, to the obstruction of law, or the interruption of public tranquillity; not directed, however, against the constitution, nor amounting to treason.—Thus an insurrection, though in arms, to destroy an inclosure, is in England a riot, in Scotland sedition; but an insurrection to destroy all inclosures constitutes treason.—But there is a crime different from this; there is an attempt to excite, or to commit sedition; an attempt which, in treason, and in treason alone, is converted into an overt act, and, on account of its dangerous consequences, punished by statute as treason itself. State crimes, therefore, are either sedition or the attempt to excite it, or certain actions, converted, for the preservation of the state, into treason. I conclude, therefore, both from the nature of crimes in general, and from the distinctions essential to crimes against the state, that an attempt to commit sedition, never can constitute actual sedition.

This distinction, and these definitions, may be variously illustrated. Nor, in a question concerning the signification of terms, will your lordships reject the assistance of philology, or of any science that ascertains their common acceptation, or their proper import. If we resort, then, to the acceptation of the word in our own language, sedition is defined by Johnson, our greatest philologist, "a tumult, an insurrection, a popular commotion, an uproar." Here an actual commotion is specified, not that seditious attempt, the tendency or the design of which is to excite commotion. If we examine its etymology, sedi-

tion, *secrsum itio*, is a separation or secession from the body of the people; and in this sense the secession of the Roman people to the Aventine mount, would have been a sedition, had not the cause of the people ultimately triumphed. But the speeches of Sicinius, which produced that secession, whatever was their tendency, could never with propriety be denominated sedition. The sedition described by Virgil—

Ac veluti magno in populo cum sæpe coorta est
Seditio, sævitque animis ignobile vulgus,
Jamque faces et saxa volant, furor arma ministrat;

the actual commotion described in this simile, is very different from that attempt to create sedition, of which the brutal Appius accuses the father and the lover of Virginia.—"Certis indiciis compertum se habere, nocte totâ cœtus in urbe factos ad movendam seditionem."—Livy. Convocations were formed in the city, and during the night, but Virginius and Icilius were only accused of attempting, by these nocturnal convocations, to stir up the people to actual sedition.

My lord, the application of this distinction is sufficient to determine the nature of the crime. If the *corpus delicti* consists in opinions and speeches, or in resolutions, the concurrents of opinions and result of speeches, these are criminal on account of their tendency to excite sedition or disturbance in the state. The tendency of the offence constitutes the guilt; for I maintain, that in themselves the speeches are not criminal. The resolutions, if locked up in the breast,—the speeches, if uttered to the winds of the desert,—the writings, if concealed in our repositories from human observation, are neither criminal nor obnoxious to punishment. In the celebrated case of Algernon Sydney,* the papers discovered in his cabinet, and never promulgated, afforded no legal evidence of treason, and would have constituted no species whatever of sedition. I repeat it, therefore, that the speeches are not in themselves criminal. The man who writes, without attempting to disseminate, or to publish, a seditious composition, may remain in the country as an innocent citizen; and, however disaffected in secret to government, will still enjoy the protection of its laws. Your lordships will therefore observe, that it is not the *malus animus* which is punishable, not that mind which is hostile to the state, but the declaration of that hostile disposition, *malo animo*, to the effect of exciting disturbance, or with a design to generate similar hostility in the minds of others. The fact itself may be inoffensive; the attempt may be impotent; but the attempt, though frustrated, then becomes criminal when dangerous to society; and its tendency is the circumstance which constitutes the crime.

My lord, the principle which I have thus endeavoured to establish, is fully recognized in the law of England, in which contempts or misprisions against the king or government, offences equivalent to verbal sedition, are punished on account of their tendency alone. "Contempts and misprisions," says Blackstone, "against the king's person and government, may be by speaking or writing against them, cursing or wishing him ill, giving out scandalous stories concerning him, or doing any thing that may tend to lessen him in the esteem of his subjects, may weaken his government, or may raise jealousies between him and his people."* Though denied in argument, the principle is acknowledged in the indictment itself. The *corpus delicti* is there stated, as "of the most dangerous and destructive tendency, hostile to the peace and happiness of society, and tending to subvert the constitution of the realm." In every other indictment for verbal sedition, the same tendency has been uniformly charged.

But, in opposition to the concurrent authority of lawyers, in contradiction to that essential distinction between a crime attempted, and actually committed, sedition, it is said, is a technical epithet, expressive of a variety of distinct crimes, but incapable of a definition to which every seditious offence may be reduced. Sedition is represented as a hydra, united below in a common trunk, but disparted above into a thousand heads. Of the seditious it is said,

Their aims are various, as the paths they take
In journeying through life.

Nor are their crimes, though obnoxious to legal penalties, reducible to any legal definition or standard.

My answer is this, that the supposed variety, so unsusceptible of definition, proceeds from the creation of various statutory acts of sedition, just as lesser offences are sometimes converted into statutory treasons. Simple convocation, unarmed conventions not tumultuous, bonds and leagues among subjects, are acts of sedition created by statute, and certainly not included in the legal definition affixed to sedition;—an actual commotion or insurrection of the people. But, at common law, the definition is not the less true, that certain acts, not comprehended under it, have been declared by statute tantamount to sedition, and sanctioned by the penalties attached to that crime. In treason, of which the definition, contrary to what has been formerly asserted, is precise and explicit,—in treason, which consists in counteracting, or betraying, that allegiance due from the subject by birth or residence, "the zeal of the legislature," according to Blackstone, "has sometimes departed from this its primitive idea." To assert that the legislature cannot

* See Vol. 9, p. 817, of this Collection.

* See 4 Bl. Comm. 123.

limit or alter the succession, is a statutory treason, not comprehended under its legal definition. But the legal definition is not therefore destroyed.

My lord, the authority of Erskine and of Bayne has been also quoted, to prove that real sedition is a convocation without authority, tending to disturb the tranquillity of the public. Had the gentleman quoted the preceding sentence from Erskine, that "sedition consists in raising commotions or disturbances in the state," your lordship would have perceived from the context, "such commotions as are directly against the sovereign or the state, amount to high treason; but where raised to redress some supposed grievance, are properly sedition," that the intermediate passage related, not to peaceful and unarmed conventions,—but to those irregular and tumultuous convocations, that are always riotous. Bayne, whose institutions are a brief and imperfect abstract from M'Kenzie's, has obviously confounded sedition at common law with a statutory offence. Popular commotions, to the obstruction of law, or the disturbance of public peace, were punished at common law; unarmed conventions (whatever was their tendency) prohibited by statute. Happily the laws against peaceful unarmed conventions are consigned to oblivion; but to the definition of real sedition at common law, Bayne has added, a convocation of citizens without authority; and to render it illegal, specifies its tendency to disturb society. If tumultuous, the convocation was illegal at common law; but the statutory crime of convention, to which the definition of sedition is thus arbitrarily extended, was illegal, whatever was its tendency, whether directed to the worship of God, or to the obstruction of public tranquillity and justice.

Such then, my lord, is the law. I shall now proceed to examine the facts specified in the indictment, whether, and how far they amount to the crime of which my client is accused. The first is his accession to an illegal and seditious convention; for I will not presume, that a peaceable convention of an innocent tendency constitutes a criminal charge to-day. The illegality of such a convention must consist in the objects to which it was directed, its seditious nature in the measures adopted to attain these objects. I shall therefore examine, first, the objects proposed by the convention, and then the mode in which these were pursued.

And here, my lord, I affirm that annual parliaments and universal suffrage, the sole objects proposed by the convention, are legitimate and constitutional objects of pursuit. These are principles recognized in the theory of our constitution, nor questionable unless as expedient in practice. Annual parliaments are confessedly a question of mere expediency, like those of a triennial or septennial duration. They were appointed, and their legitimacy recognized, by different statutes, the 3rd and and 34th of Edward 3rd, and continued till Richard 2nd, in whose unfortunate reign the use of long parliaments was first introduced. Your lordships cannot be ignorant that motions for annual parliaments have been annually renewed in the House of Commons; nor is it necessary for me to assert the constitutional nature of a question, which, in 1745, when agitated in the House of Commons, on the motion of Mr. Carew, was negatived only by a majority of thirty-two.*

But your lordships hitherto have uniformly reprobated universal suffrage, as an illegal object, repugnant to the principles of our happy constitution, productive of anarchy, the sources of misery; and, as no people have a right to will their own misery, it is inferred, that none are entitled to universal suffrage. Without controverting this logical deduction, I shall argue, not to a political, but to a legal effect, that universal suffrage is a principle conformable to the spirit, and recognized in the theory of our constitution, though, from motives of expediency, not adopted in practice to its utmost extent. What is the object proposed by universal suffrage? That freemen, who possess an independent will, not subjugated to the power of another, shall enjoy, each his suffrage, in the election of those representatives by whose acts they are bound, by whom their property is disposed of, and their conduct regulated. Who are excluded in this scheme of representation? Ideots, minors, paupers, and criminals,—all those who have no will of their own, or what is equivalent, no honest or independent will. What then is the theory of representation in the British constitution? That those only shall be excluded from voting, whose situation is such that they cannot be presumed to have a will of their own. Each proceeds on this common principle, that the persons of freemen are represented, not their property, and each aspires to this sublime idea, that the system of representation should be established on a basis as broad as its superstructure. The practice of our constitution has degenerated, it is true, from its theoretical perfection, whether, as some suppose, from the imperfection natural to the human race, or, as others imagine, from the decay and decrepitude of every human institution. But the principles, my lord, are the same. Idiots and criminals are excluded in the scheme of universal suffrage, on the principle that they have no will of their own; and on the same presumption, poverty, in the practice of our constitution, is a cause of exclusion. Qualifications of property are therefore

* See in the New Parliamentary History, Vol. 13, p. 1056, the debate on Mr. Carew's motion "for leave to bring in a bill to enforce the calling of a new parliament every year, after the expiration of this present parliament." On a division, the numbers were, for the motion, 118; against it, 145.

no principle in our constitution, but a test of that principle which our constitution requires. Instead of constituting, as has been erroneously asserted, the right of suffrage, they are merely a test of that independent suffrage, which, by the principles of our constitution, is considered as the inherent birth-right of every British freeman.

My lord, this is no new doctrine which I now maintain. It is supported by the most popular, and let me add, the most orthodox writers on the English constitution. Montesquieu, in a passage (which as the French may implicate sedition, I shall translate to your lordship) maintains: "That in England, all the citizens in their different districts, ought to have a right of suffrage in the choice of their representatives; those only excepted, whose situation is so vile, that they must be reputed to have no will of their own.* To the same purport Blackstone informs us, "as to the qualifications of the electors. The true reason of requiring any qualification, with regard to property in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man, a larger share in elections than is consistent with general liberty. If it were probable that every man would give his vote freely, and without influence of any kind, then, upon the true theory and genuine principles of liberty, every member of the community, however poor, should have a vote in electing those delegates, to whose charge is committed the disposal of his property, his liberty, and his life. But since that can hardly be expected in persons of indigent fortunes, or such as are under the immediate dominion of others, all popular states have been obliged to establish certain qualifications; whereby some, who are suspected to have no will of their own, are excluded from voting in order to set other individuals, whose wills may be supposed independent, more thoroughly upon a level with each other." "This," he continues, "is the spirit of our constitution: not that I assert it is in fact quite so perfect as I have endeavoured to describe it; for, if any alteration might be wished or suggested in the present frame of parliaments, it should be in favour of a more complete representation of the people."†

Here, my lord, universal suffrage is represented by Blackstone as congenial to freedom, and the spirit of our constitution; qualifications, as the test of an independent suffrage. But why this test? Not that an universal equality of suffrage is productive of anarchy, anarchy of misery; but without such test, that the opulent would arrogate an undue influence inconsistent with liberty. The test is justified, not as preclusive of a dangerous equality, but because it restores, to those that are independent, their equality of suffrage. The question which Blackstone has thus determined, is decided differently by a judge in India. Sir William Jones has asserted the expediency, as well as the right of universal suffrage,* nor is that accomplished and celebrated scholar singular in a question agitated so variously by the ablest politicians. While the principle has ever been acknowledged in theory, the expediency of universal suffrage has been determined, in the negative by Mr. Fox, in the affirmative publicly, in resolutions issued from such a convention as the present, by his opponent Mr. Pitt.†

But to what purpose do I quote these passages, or appeal to the authority of these distinguished names? To demonstrate to your lordships, that universal suffrage and annual parliaments, the professed object of the British convention, are legitimate and constitutional objects of pursuit. It is to convince your lordships that these objects are strictly constitutional, and acknowledged in theory; and that their expediency in practice is the only question. But, my lord, this is a question to be debated between man and man,—a question fit for discussion in the House of Commons, not for the cognizance of a court of law. It is a question on which the wisest and the greatest have differed; but let it not be told in England, that universal suffrage, a principle essential in the theory of its constitution, has been arraigned as seditious, and proscribed as unconstitutional, in a Scottish court.

Such then, my lord, were the professed principles, and such the ostensible objects of the British convention. It remains to examine the mode proposed, or the measures adopted, to accomplish these legal constitutional objects. But in the speeches and resolutions charged as seditious in this indictment, what is there to indicate that the secret motives of the convention were different, that its designs were criminal, or as the public prosecutors has hardily asserted, that a plan was deliberately formed to subvert the constitution? I shall examine, my lord, as concisely as possible, the resolutions and speeches contained in the indictment.

The first is a speech extracted from the Gazetteer, and ascribed to Mr. Gerrald, in the British convention. My lord, I affirm that this speech is legal and constitutional throughout, and perfectly conformable to the professed object of that association. It begins by stating, that after the union of the crowns, on the accession of James to the throne of England, "the people of both

* Spirit of Laws, book 11, chap. 6.
† 1. Bl. Comm. 171, 172.

* See the case of the dean of St. Asaph, Vol. 21, p. 847, of this Collection.
† But see the note, *ante*, p. 838.

countries were deprived of some of their most valuable privileges." And who will deny, that during the sanguinary reign of the Stuarts, the most dangerous encroachments were made on our liberties? Who will maintain that the privileges of the people were not then invaded;—privileges, which in some instances, the revolution has not entirely restored? But the speech proceeds to establish universal suffrage, not only as our birth-right by nature, but as a right actually enjoyed under the Saxon government, and exercised till the Norman conquest or robbery (a robbery, my lord, it undoubtedly was), abridged the inheritance of our Saxon ancestors. To restore this natural right, to recover this inherent principle, as it is termed, of our constitution, it proposes the most peaceable and legal means, that the people should be instructed in its importance, and persuaded to solicit its restitution by petitions to parliament. My lord, this is not the language of sedition, but an assertion of our unalienable right to petition either branch of the legislature. But there are passages supposed to indicate a different intention. The petitions were to be subscribed by a majority of the people, "by a number so respectable as to *command* attention; and it will soon have that respectability, if we have reason on our side." On this invidious construction, my brother and my friend has sufficiently commented. Were *command* (than which I know not a happier phrase) expressive of a compulsive force to overawe the legislature, its correlative would be *obey;* but here the attention which truth and numbers may be figuratively said to command or enforce, and which certainly they strongly solicit, is *yielded* by parliament, whose attention is said to *obey.*

The next article of the indictment discloses the grand arcana of sedition,—the resolution ascribed to the convention of resisting the authority of the legislature; concerning which I shall first examine its import, and then its criminal amount and complexion. I must premise, however, that in a case like the present, wherever a declaration is equally susceptible of two constructions, that which is innocent is to be received as its genuine interpretation and sense. Your lordships may remember the trial of lord Strafford.* An accusation against him was, that he said in the public ball-room at York, "that the little finger of prerogative should lie heavier upon them than the loins of the law." By inverting the expression thus, that "the little finger of the law was heavier than the loins of prerogative," he fairly explained it away. The Commons persisted in this accusation; but their illiberal construction of a sentence susceptible of a different meaning, has been reprobated by every historian as oppressive and illegal. If words, therefore, can admit of two constructions, that which is most favourable to innocence must always be adopted.

My lord, to proceed to the resolution, the first part of it states, in general, that "if any unconstitutional act be proposed in parliament, inconsistent with, or subversive of our known constitutional liberties, we declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of the country: and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people, and annual election, until compelled to desist by superior force." What is the import, then, of following "the wholesome example of former times?" They meant, it is said, to fly in the face of all constituted authority, and to resist the government. But is this the wholesome example of former times? No, this is not the case; for the expression is immediately explained by the context, "by paying no regard to any act which" —shall do what?—"Which shall militate against the constitution of this country;" and how disregard it? Not by active and forcible resistance; but with all the resignation of a quaker; by that passive resistance which a quaker would show, were he to enter the court, and remain with his head covered, till your lordships' macer should take off his hat. He submits passively to the laws of his country, when exerted; to which, at the same time, he pays no previous regard. But the resolution amounts to this, that the members associated, or delegated, to obtain universal suffrage and annual parliaments, on the first notice of a bill to suppress their convention, and to frustrate these their constitutional objects, shall assemble immediately, nor depart till the law, in the event of its being enacted, shall receive its full operation on them. They assemble on the first notice of the bill, for this obvious reason, that no meeting could take place when it passed into a law. They assemble to deprecate, and, by every legal endeavour, to prevent its passing. But they will continue to assemble till compelled to desist by superior force. To discover the criminal nature of this passive resistance, of this resolution to obey upon compulsion only, let us suppose, for a moment, that an act obviously unconstitutional were adopted by legislature; that monarchy, no matter how improbable, were abrogated for ever, what would be the conduct of every peaceable citizen interested in its support? I would appeal to your lordships, sworn as you are to abide by monarchy, that you would resist, passively at least, though not perhaps forcibly, that act which you thought unconstitutional, and continue to meet in court, by legal authority, "till compelled to desist by superior force." Such would undoubtedly be your lordships' conduct, and such is the precise conduct which

* See Vol. 3, p. 1381 of this Collection.

the convention observed. Their ideas of resistance, their resolution not to desist till compelled by superior force, are explained, and the extent of both ascertained, by the compulsion in consequence of which they desisted, and the force by which they were actually dispersed. Their resolution was not *to resist;* it was *not to desist* till compelled by force; and when my friend Mr. Davidson, the sheriff, laid hold of the president's arm, to remove him from the chair, "No, Sir," says the president, "this is not force enough; a little more if you please;" accordingly the sheriff, by a very gentle exertion, removed him from the chair. The whole was a scenic exhibition; and truly, my lord, where the force was so ludicrous, a resolution not to desist till such force was exerted, can never be criminal.

My lord, the resolution proceeds—"and in case of an invasion to reassemble in convention." The construction imposed upon this, is, that the convention meant to join, or assist the invaders. My explanation is very different, that it was the intention of the members, by every effort in their power, to resist an invasion. The resolution concludes thus, "that all, or any one of these calamitous circumstances," (and an invasion is one of the preceding circumstances), "shall be a signal for the members to meet in convention." But why calamitous, if they did not consider it really as such? If they did not mean to avert that calamity, why represent it to the people or to themselves, as a most calamitous circumstance? Can any thing more explicitly point out their intention? Or when the whole resolution is considered, can your lordships impose any other construction than this upon it, that the intention of the members was, by every possible exertion, to avert that which they justly represented as a national calamity?

Now, my lord, having determined the sense and import, let us examine the criminal amount of a resolution considered as so alarming and dangerous, that the constitution, in the opinion of some wise men, totters already to its very foundation. A refusal to yield an implicit, uncompelled obedience, to an act whose existence is only potential, on the supposition too of its proving an unconstitutional act, is charged to-day as a direct attack on the authority of the legislature, constituting a species of real and atrocious sedition. To impugn the authority of the three estates, or to attempt a diminution of their power or dignity, was, by 1584, chap. 130, declared to be treason; and the prosecutor maintains an argument sustained by your lordships on a former trial, that although the act is superseded by the introduction of the English statutes respecting treason, the offence that ceases to be treasonable, must still subsist as sedition at common law. My lord, let me explain the origin of this act, whose very abrogation, it seems, is productive of a new species of sedition. It was obtained by James 6th to preserve the ecclesiastical estate, or rather the episcopal power, in parliament, then in danger of being subverted by the efforts of our presbyterian ancestors. The dignity of the estates might be variously impugned, by violence, by publications and speeches, or by resolutions in parliament. A variety of inferior offences, or of actions in themselves indifferent, were therefore converted by this act into treason. But these offences, when the act was abolished, were again restored to their primitive state. Popular commotions directed against an estate of parliament, would return as formerly to real sedition; speeches, or publications, derogatory to either of the three estates, to their original situation as verbal sedition. By the act immediately preceding this statute, to decline the authority of the council was treason; but how absurd to maintain, that because the act is abolished, the offence, originally a contempt of court, subsists at common law as a species of real, and atrocious sedition! I conclude, therefore, that the various offences comprehended in this act, must revert to their original situation at common law, like him whose patent of nobility is forfeited, and whose descendants return to the common herd of mankind.

But, my lord, I do not like this act, nor its introduction in this trial. And I will tell you why. The earl of Argyle was arraigned on this statute, and convicted of treason because he bestowed an explanation of his own on a religious test, prescribed by parliament, whose authority he thus invaded, and whose power he impugned.* But his conviction dishonoured the justice of the nation; and the act itself, instead of being superseded by the English law, was abrogated previously by our claim of rights, or rather declared to have been an obsolete and dead statute at the very time he was tried. The claim of rights declares, that James 7th had forfeited his right to the crown, among other things, "by causing pursue, and forfault several persons upon stretches of old and obsolete laws, upon frivolous and weak pretences, upon, lame and defective probation, as particularly the late earl of Aygyle, to the scandal and reproach of the justice of the nation." Thus the earl of Argyle, to the reproach of justice, was condemned on the stretch of an obsolete law. But in this enlightened period, the gentleman at the bar, more unfortunate even than the earl of Argyle, is to be convicted of a crime that has survived this old and obsolete act;—an unknown sedition that springs like a phœnix from the embers of treason. Argyle was convicted, because he impugned an existing law, but my client is arraigned, because he impugns an act whose existence as yet is entirely potential. But, my lord, the offences

* See his case in this Collection, Vol. 8, p. 843.

accumulated on the British convention, must return to that situation which they held before this obsolete statute was enacted; commotions to real, publications and speeches to verbal sedition.

Not to exhaust your lordships patience, I shall observe of the speech that succeeds this resolution, and of the convention of emergency, that the first, by enumerating the restraints imposed by a convention bill on the right of petitioning, coincides exactly with the interpretation bestowed on the preceding resolution;—that the convention, by constitutional means, would endeavour to prevent the introduction of a law to intercept their petitions, and to frustrate the ultimate attainment of their objects. As to the other, it was natural for the convention, in the event of their dispersion in one country (which, as their objects were constitutional, they must have considered as illegal), to provide secretly and beforehand, for re-assembling in another, beyond the jurisdiction of the sheriff by whom they were dispersed. School boys, when dispersed in one parish, will repair privately to the adjoining, where they may renew their bickerings without molestation.

But what is the amount of this, and of every other article contained in the indictment? Their French epithets, used perhaps foolishly, their resolutions, and their speeches indicate, it is said, a design to subvert the constitution or government. The solicitor general undertakes to prove that a plan was formed to subvert the constitution. Let me tell him, that his evidence will not, and cannot exceed the indictment, that "the whole form and manner of their procedure, as well as the principles they avowed and propagated, clearly, and unequivocally demonstrate, that their purposes were of the most dangerous and destructive tendency, hostile to the peace and happiness, and tending to subvert the constitution of this realm." Their principles, and the tenor of their procedure is the only evidence from which a plan to subvert the constitution is inferred. But if such a conspiracy were formed, if such a design were entertained, it amounts to treason, and should be tried as such. But a charge of treason, let me tell your lordship, cannot, and dare not be maintained; not that a concerted design to subvert the constitution, is not an overt act tantamount to treason, but because there is no legal proof, nor any evidence whatever, to establish that design. The testimony of two concurrent witnesses, whether in treason or misprision of treason, is essential to conviction; but here, I repeat it again, there is no witness, and under the present indictment none can be adduced, to prove a conspiracy to subvert the state. Sedition therefore is charged to-day, and the crime is to be established, not by legal evidence, not by the testimony requisite in treason, but by inferences from resolutions, by innuendos capriciously attached to speeches, either innocent in themselves, or, if criminal, constituting a very different offence. A design to subvert the constitution, if susceptible of proof, would amount to treason. Speeches and resolutions are punishable only as verbal sedition. But an intermediate crime, a constructive species of sedition is created; and from speeches amounting only in themselves to leasing making, a new crime, incapable of proof, and unknown in law, is extorted by inference. The tendency, which alone is criminal in these speeches, is not submitted to the consideration of the jury; but the supposed motives from which they originated, are to be converted by an arbitrary and capricious inference, an inference necessarily influenced by fear, prejudice, and passion, into constructive sedition. My lord, I affirm that this is subversive of all judicial procedure. Constructive treasons are now no more; but a crime against the state may still, it seems, be established by construction, and that which constitutes in itself an inferior offence, be rendered the evidence of this constructive crime. In the unjust, and ever memorable trial of Algernon Sidney, innuendos from his writings composed the chief evidence, but sir John Hawles justly remarks, that "as this indictment was an original in the particular before-mentioned, so it was a second of an innuendo indictment of treason; Fitzharris was the first. The prosecution against Car, as I remember, was an information, and judgment arrested after a verdict, because it was by innuendo, of which no precedent could be produced; and although in actions for words it was permitted, yet in criminal matters, being penal, it was resolved it ought not to be permitted, and certainly much less in treason."* In criminal matters, no innuendo is therefore admissible, much less in treason. My lord, our own practice corresponds with this. Oliphant and others accused of drinking the pretender's health in public, "with an intention of abetting his claim to the crown," were tried and convicted of verbal sedition.† The tendency of their speeches to excite disturbance constituted their sole offence; but the treasonable intention inferred from their speeches, of abetting the pretender's claim to the crown, was not then charged as a constructive species of real sedition.

My lord, an authority occurs on this subject, not usual in a court of justice, yet so apposite, that I shall quote it without hesitation. It is the Monthly Review for February, wherein a pamphlet is reviewed, the composition of a Mr. Playfair, a man whom I know not, but who exhorts the nation to wage an eternal war. Mr. Playfair asserts that "it is only a matter of regret, that those

* See Sir John Hawles's Remarks on the Trial of Algernon Sidney, *antè* Vol. IX. page 1002.

† *Antè* Vol. 17, p. 763.

who undermine our government cannot be treated *à la françoise*, since it is the French system that they have taken for their model." What say the reviewers to this humane proposal? Their honest indignation breaks forth in a stream of argument and eloquence: "A powerful stream of the milk of human kindness flows through this sentiment of regret that the guillotine cannot be set to work in this country, on those who do—what? Betray their country? No; for they are already liable to the penalties of treason, and to a death infinitely more painful than that which is produced by the guillotine. Who adhere to the king's enemies? No; for they are in the same predicament. Who by overt acts attempt to overturn our government? No; for that also is treason. Whose heads then are those which the national razor should shave in England, if the pious wish of Mr. Playfair could have effect? The heads of those who undermine our government; an expression not known in our law, and of course not to be found in the index of the criminal code."

Had these reviewers directed their eyes to Scotland, they would have seen, that, to undermine the government, though, under that denomination, unknown in law, nor to be found in the index of our criminal code, is created by implication a crime against the state. They would see that the most iniquitous attainders of former times, might have been converted into a capital, though inferior crime. Sidney and Strafford were both convicted, though at different periods, of constructive treason. But Sidney, though unjustly attainted, might have been condemned for sedition, on those innuendos derived from his writings, which in treason were not admissible as legal evidence. Strafford too, if his sentence was iniquitous, might have been legally convicted of constructive sedition; and if this crime has a legal existence, these men might have perished unlamented on the scaffold. Strafford was accused, and on constructive evidence, of an endeavour to subvert the fundamental laws; a crime on which the statute of treasons was totally silent. Arbitrarily to introduce it into the fatal catalogue was, in itself, according to historians, a subversion of all law. But wherein does this differ from the charge against my client of a design to subvert the constitution and government? Where has this law lain so long concealed, that it now bursts forth to the destruction of this innocent man? Where is the precedent for this unknown law, or the landmark by which he could discover its existence? Is it sufficient for his protection, or for our security, that this new crime of subverting government is prosecuted, not as treason, but sedition? Or is this new law less a snare to the unwary, because the capital punishment attached to sedition, may be restricted by the humanity of Court, to whatever arbitrary punishment the Court may impose? Must he suffer for a crime that had no existence before, by a law created for the occasion, that may burst at last on our own heads, and involve us in its ruins? My lord, let the speeches, if criminal, be punished as such; but let not a constructive species of guilt be deduced by inference from these speeches, nor a crime established that is unknown in law.

2. These speeches, if criminal, are comprehended, as my brother has already demonstrated, under the acts 1584 chap. 134, and 1585, chap. 10, on which I maintain, as my second proposition, that where the offence is provided for by statute, a severer or a different punishment cannot be inflicted at common law. To establish this proposition will not require any long deduction. Nor would I condescend to an argument on a proposition almost intuitive, but for an opinion delivered on a former trial, that where the indictment is founded, and sedition charged, on the common law, the Court are precluded from resorting to statutes. My lord, the common law is a collection of usages, the origin of which is uncertain, but of which the existence is preserved by tradition. The statute, is a superaddition to the common law; declaratory either of its meaning, or remedial of its imperfections. If declaratory, it ascertains precisely what the common law is; nor can your lordship, in your interpretations of the common law, travel beyond the limits prescribed by statute. Again, if remedial, it either enlarges and supplies the deficiencies, or corrects the luxuriance, by retrenching the superfluous excess of the common law. Remedial statutes are therefore again divided into the law of England, into statutes enlarging and restraining the common law. As an enlarging statute inflicts a greater penalty than was otherwise competent, the crime, as in stealing from bleachfields, and other statutory thefts, may, from motives of humanity, be charged at common law, to the effect of inflicting the inferior punishment. Thus, in England, as a misprision is contained in every felony, it is held that the indictment may proceed on the lesser offence. But a restraining statute limits the penalty formerly competent; nor can a severer punishment be inflicted at common law, than that to which the restraining act has already reduced it. A different punishment cannot even be inflicted; for the judge, whose hands are thus tied up, has no power to deviate from the statute. Otherwise the consequences would be most dangerous; the effect of the statute would be entirely frustrated; the law would depend on the passions, the caprice, or the interest of the man who prosecutes, the punishment on the discretion,* of the judge who pronounces the sentence.

* As to which see the opinions of Gibbon, lord Camden, and Burke, *antè*, Vol. 8, p. 56, *note*.

3. But the punishment, as regulated by 1703, chap. 4, is fining, imprisonment, or banishment, meaning thereby banishment forth of the realm alone. This is the third proposition, which I proposed to illustrate. The argument maintained for the crown is this, that banishment by the mode of transportation is prohibited neither by the spirit nor the letter of the act; that the spirit, as expressed in the preamble, meant only to abrogate confiscation and capital punishments, the letter to specify the most usual arbitrary punishments as then understood; and it is asked with an air of triumph, who will say, that by banishment the Court was limited to the inferior of two modes of punishment comprehended under that generic term?

My lord, the statute itself shall refute this argument. The preamble recites, that from their generality, and the various constructions of which they are susceptible, the laws against leasing-making (which are previously enumerated) as inferring death and confiscation, may be of dangerous consequences, and the enacting clause proceeds accordingly to abrogate the punishments of confiscation and death. So far the supposed spirit, and the letter are consistent. But the enacting clause goes farther, not merely to specify the arbitrary punishments usually employed, but as a restraining statute, to limit these to an alternative penalty, to banishment, or imprisonment, or a fine, or on the inability of the party to discharge a fine, to a corporal punishment mitigated, and expressly limited to the preservation of life and limb. Your lordships will therefore observe, that the statute extends farther than the supposed spirit ascribed to the preamble. A fine may be inflicted, banishment may be inflicted, or imprisonment inflicted; but these penalties cannot be accumulated, nor corporal punishment superadded to banishment, or indeed inflicted, unless on the alternative of the party being poor and unable to pay a fine. The spirit therefore, ascribed to the preamble is contradicted by the letter of this restraining statute, restrictive even as to that alternative punishment with which it entrusts your lordships. The question therefore is, what is the meaning of the term banishment in the act of queen Anne?

And on this question, the argument from the act 1609, so fully illustrated by my brother, is to me decisive. I hold, that the banishment prescribed by that statute is from Scotland alone; as transportation, a punishment unknown when it passed, was not then in the contemplation of the legislature. This statute is the last enumerated in the act of queen Anne, wherein the epithet banishment occurs but once. Were transportation therefore, as implied in that generic epithet, to be inflicted under the other acts against leasing-making, then this absurdity would take place, that banishment, though employed but once, has a double signification in the act of queen Anne. If applied to 1609, it imports no more than exclusion from Scotland; but when applied to the other statutes which the same act enumerates, it implies not only a seclusion from Scotland, but banishment beyond seas, transportation to the plantations, loss of liberty, and personal servitude. Corporal punishments are limited to the alternative of the party being unable to pay a fine: yet this greatest and most ignominious of corporal punishments is entrusted to your lordships as a mode of banishment. But, my lord, were banishment, as employed in the act of queen Anne, an expression either disputable or doubtful, its precise import is thus ascertained. When the act 1609 was in the special contemplation, and underwent the revision of parliament, that signification which was implied, or that punishment which was prescribed, in banishment, must *in dubio* be presumed to have been affixed to the same word, when employed by parliament in the act of queen Anne. If banishment, by the act of 1609, be simple exile, or exclusion from the realm, there is no reason to suppose that it acquired the additional sense of transportation beyond seas, when that statute was revised by the act of queen Anne.

To this argument, my lord, I have heard no answer, and I hold it decisive. But the act against wrongous imprisonment, and another of Charles 2d, inflicting banishment to the plantations on those who refused to depone against delinquents, have been preposterously quoted. The first, by banishing to the plantations, demonstrates the solicitude of parliament to distinguish transportation, a punishment recently introduced, from simple banishment as understood at common law; in the other, an act against wrongous transportation, as well as wrongous imprisonment, the expression banishment is not once introduced.

But, my lord, if transportation, which I hold to be a punishment superadded to banishment, be a mode of banishment comprehended under that generic term; if under a statute, sanctioned merely by banishment, your lordships are entitled to inflict transportation; then, under a sentence of your lordships inflicting banishment, those to whom the execution of the laws is entrusted, would be entitled, equally with your lordships, to transport to the plantations the man whom your sentence has merely banished. My lord, the consequence follows inevitably from the argument, and my client, banished to-day by your lordships, may be transported to-morrow by the executive power.

But a case from the records of the privy council has been quoted as decisive. Baillie, a few months after the act of queen Anne, was convicted of leasing-making, and condemned by the privy council, to be banished and transported, placed in the pillory, and adjudged

infamous.* I mean not to impugn the authority of a court of law, when I assert that this sentence was most unjust and illegal. The privy council was necessarily arbitrary, uniting the executive power to its judicial authority. The trials in that court were without jury, and the sentence was pronounced when the party was withdrawn. But a more illegal sentence than the one proposed to your lordships as a precedent, cannot be conceived. In every article it violates the act of queen Anne. Banishment, or imprisonment, could only be inflicted alternatively, and corporal punishment, in the particular alternative of the party being poor and unable to pay a fine! But a gentleman certainly not too poor to discharge his fine, is declared infamous, a punishment which the statute has not authorized, and condemned to the pillory, a corporal punishment replete with infamy. Transportation, infamy, and the pillory are all accumulated on his unhappy head; and as if to refute the plea that transportation was an alternative mode of banishment, he is first banished from the kingdom, and then ordained to be transported to the plantations. But instead of the illegal sentence of a court abolished as oppressive and tyrannical, if your lordships regard the just and lenient decisions of your predecessors, what is the conclusion? That the spirit of the statute, as interpreted twelve years after its enactment, is mild and equitable, when offences not less heinous than those in the indictment, committed too on the eve of rebellion, were so mercifully punished.

My lord, a reference has also been made to decisions recited on a former trial, to the effect of proving that in these cases, transportation was the mode in which banishment, the generic punishment, received execution. I observed that the sentences, as in the case of Rankin, were precisely to this effect:—"The court adjudge the panel to be banished forth of the realm, and ordain him to return to prison, and to be confined therein till occasion be had for his transportation to the plantations." We are told that the last part of this sentence is an explanation, declaratory of the first; and confinement till an opportunity offer for transportation, as well as transportation itself, is interpreted as the mode in which banishment forth of the realm must receive execution. Now, my lord, it appears to me that this inference is not logical; for banishment forth of one country, never can imply transportation to another. My explanation is this; transportation to the plantations, as inflicted in the latter part of the sentence, is supplemental, not declaratory; an additional part of the sentence of banishment forth of the realm; not explanatory of its meaning, or of the mode in which it was to be carried into execution. The crimes thus punished by transportation are immaterial; they were either capital, and mitigated to less than death, or offences of which the punishment is arbitrary and without control; for thus, without the intervention of statute, transportation was first introduced into our law.

With your lordship's permission, there are yet two circumstances to which I shall advert;—the motive or the expediency of the punishment which I deprecate, and its disproportion to the offence. The motive hitherto uniformly assigned for transportation is, that there is no security, nor advantage to be obtained, by banishing across the Tweed, those who will still disseminate their sedition in England. My lord, has England no laws for her own preservation, that she must be indebted for protection to the severe vigilance of a sister kingdom! Is it requisite that the laws of Scotland should interpose to prevent the future repetition of crimes in England? Sedition in Scotland is sufficiently repressed by expulsion from Scotland; but must England be secured by your sentence, even from the apprehensions of similar sedition? To prevent the future commission of crimes in England, you impose a punishment which, if the crimes were actually committed, the laws of that country would not authorize, and could not inflict. It is the spirit of true punishment to prevent the future, by exhibiting a corrective example of the past; not by inflicting the penalty previous to the apprehended crime. With us the offence as bailable does not amount to felony; in England it could not be punished with banishment. Why then inflict a punishment appropriated to felony, as preventive of a crime apprehended in England,—a punishment which could not be inflicted in England, were the crime committed?

My lord, on this immense disproportion between the punishment and the offence, let me suggest a distinction which I am too much exhausted to illustrate.—Clarendon† was banished, Barrington transported. Clarendon, when exiled by a vicious Court and a venal monarch, lived abroad, to himself and to his country, to illustrate the annals of British story. Bolingbroke,‡ though expelled for treason, lived to return, and, in a corrupt age, to revive the flame of patriotism in every English breast. Atterbury,§ though in exile, and under discountenance, closed the honoured remainder of his life in dignity and peace. But a man whose offence is inferior, whose abilities are equal, and his integrity, I am bold to say, superior to Bolingbroke's, whose genius may distinguish his name, and

* See his case in this Collection, Vol. 11, p. 1035.

* See his case in this Collection, Vol. 6, p. 291.

† See his case, *antè*, Vol. 15, p. 993.

‡ See the proceedings against him, *antè*, Vol 16, p. 323.

enrich the literature of his country, depends on your sentence, whether his future life shall be lost to society, himself doomed to a receptacle of vice and misery, and transported to a shore from which apparently there is no return. From the state of his health, I must add, that a sentence of transportation is to him, in all human probability, a sentence of death.

Lord *Henderland*.—My lord, the subject of our present consideration is not as to the guilt or the innocence of the panel at the bar, but as to the relevancy of the libel; and, my lord, I shall be very short in what I have to say. It is certainly necessary to examine every criminal libel that comes before us, for crimes may be charged in a different way; a charge may be relevantly laid in one indictment, and not in another; and, my lord, in a crime of this kind, which relates to a society or convention, the views of which society may change very much, and the views of the members may be very different, men misled by folly, or misguided by faction, may have gone into meetings, into conventions of this kind, not aware of the views which they might have; not aware of the consequences which they might draw from it, may, at last, come to feel the hollow ground upon which they stood, the dangerous footing that they were upon, and the consequence of their guilt might be very various indeed; therefore it becomes me to examine this libel closely.

My lord, the question is, is it relevant or not? that is, do the facts charged in the minor proposition come up to the crime charged in the major proposition? that is all my province, I have nothing more to do with it.

My lord, this libel charges the crime of sedition, and the general import of the minor proposition is, that this person has been guilty in so far as he has been an active member in a seditious society;—a society, or convention, that is charged in the libel to be seditious. With respect to the logical conclusion, there cannot be a doubt; for, I think, this proposition may be fairly assumed, that whoever is an active member of a seditious society is guilty of sedition: by active, I mean concurring in those measures which render and characterize that society to be a seditious one; but I should not be satisfied with an indictment laid in that way.

My lord, if an indictment was to charge murder in the major proposition, and in the minor proposition it was said to be, insomuch as he murdered such a man upon such a day, no doubt the conclusion would be logical; but I do not think it would be a fair one; because it is the duty of the public prosecutor to specify the particular circumstances. If it said he was guilty of murder, in so far as he murdered such a man, upon such a day, by running him through the body with a sword, of which he died in a few days after, that is a proper and relevant libel. Suppose it were to say, in so far as he thrust such a person through the body with a sword upon such a day, of which wound he died, that would be a relevant libel; because, although the term murder, or the felonious intent is not repeated, it is and must be the construction of law and common sense, unless he be able to set up a defence against it, and establish that it was done by accident, which, to be sure, would be a relevant defence.

Now, my lord, the capital object in every indictment is, to consider the facts specified in the minor proposition, and how far they come up to the general charge in the major proposition. We have heard a great deal about sedition, real and verbal; distinctions which are taken by systematic writers for perspicuity and clearness; but the true way to judge of sedition is to take it from the object before you: that is the fair way; for I can conceive verbal sedition as criminal, as dangerous, as any that can be committed by actions. Suppose a man to run into the streets, and call out "To arms! to arms! kingly power is useless; it is cumbersome, it ought to be laid aside. Parliament is venal and corrupt. Let us name a body of our own to assume the power which they have improperly taken. Rouse and assert your rights." Why, my lord, it may be said this is but words; but suppose he gets people to follow him, then, to be sure, if they proceed to overt acts, it would be rebellion, it would be treason; but suppose nobody follows him, is there no criminality? Is there no danger to society? Is there no injury to government if such proceedings are tolerated? Can any man doubt that this would be a sedition totally different from any thing that I can conceive with respect to leasing-making?

My lord, I hold it perfectly clear, taking that systematic distinction that authors assume for their conscience, that there is a sedition by words totally different and distinct in common sense and reason from leasing-making. My lord, in the same way the impugning the authority of parliament, or of any of the states, that is a crime that cannot be suffered; as long as parliaments exist, they must be defended against it by the common principles of that government which they have assumed: it requires no statute; it requires no usage; it follows from the nature of the thing, that the impugning of that authority is a crime, and is the crime of sedition; and I care not whether it be merely in words, or whether it be followed by actions.

My lord, I lay out of the question the act 1584, which declared it to be punished as treason; but I say it is part of the common law, and, as was well expressed by the young gentleman who spoke on the part of the crown, must be part of the common law of every state, of every society, of every government that can exist in the world.

My lord, having said so much, the question then is, whether there is any charge made against this society (for I shall first speak of the society) that amounts to this crime, setting at nought or impugning the authority of parliament? If there is, I am sorry to draw the conclusion, but I must draw it logically, that this convention was a seditious meeting; and if this panel, which is the second question, shall appear to have been active in bringing about any such resolution, then I must hold him to be guilty of sedition. Now, my lord, I will not run through the whole of the argument, which has been long, and which has been ably and well descanted upon on both sides; I will say particularly so upon the part of the panel; and, if it had not been on so serious an occasion, I should have had great pleasure in hearing these gentlemen display that ingenuity, that ability, and that force of reasoning which they have discovered in this cause; but, my lords, it is one thing to admire, and another to approve. My lord, I should be glad it were in my power to give a fair construction to that part of the indictment which I am now coming to. I think, if in the common sense of mankind it admitted of that construction, I am bound to give it; but I must explain according to the context, according to the nature and the plain sense of the object of the resolution. Now, gentlemen, the resolution that I allude to, has been under our consideration before; you will take it in connexion with the motion made by Mr. Callender, which is also recited in the indictment; and then comes this resolution:—"That this convention, considering the calamitous consequences of any act of the legislature," plainly referring to the convention bill which passed in Ireland, "which may tend to deprive the whole or any part of the people of their undoubted right to meet, either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or a private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our known and acknowledged constitutional liberties, do hereby declare before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country." My lord, with respect to the opinion which they may form of this convention bill, that is one thing, or that any body may form of it; but to declare, by a solemn and deliberate resolution, that they have determined to pay no regard to an act of the legislature, but holding in contempt the authority of that legislature, I can put no other construction upon it; if the gentlemen of the jury can, they are at liberty to do it. I am sorry I am obliged to anticipate what may be the effect of their deliberation, but there is no help for it; I must give my own opinion in this case upon the charges before me, and I cannot, after all the attention that I have given it, put any other construction upon it, than that it was a seditious act, a seditious, deliberate declaration, to be held up by them to all their adherents, that an act of the legislature of this kingdom was to be set at nought.

Gentlemen, as to the particular activity of this panel at the bar, you have his speeches. It may be said that a speech against the convention bill in Ireland, is not sedition in this country, because Ireland is a foreign country; but you are to take what he says, with respect to that bill, in connexion with the resolution which he means to support; and you are to take into your consideration what he says in another part of his speech: "When I saw the calm deliberate countenances of all present, and the solemn manner in which it was passed, I was convinced that it would not only be a resolution of words, but a rule of action." This, at least, to push it no farther, shows his conduct and his activity in this resolution, which I must, in sound construction of common sense, consider as sedition.

Gentlemen, I will not run over the different proceedings of this convention;—they divided themselves into sections, departments, and so on.—They also had sittings, committees of organization, instruction, and finance; and, taking all those into consideration, I am at a loss to find out the necessity of such a form of government, if they only intended to petition parliament.

My lords, that resolution is against the common law of the country, and it is expressly against the statute 1584; and what shows the difference between that, and leasing making, is this, that in the very same parliament, or the next, there is an act about leasing making; and what occasion could there be for that act, if they were not different the one from the other? I have heard it said by an honourable and ingenious gentleman who has argued this cause, that this act was abolished at the revolution, because the earl of Argyle's trial, which, perhaps in part proceeded upon these acts, was said to proceed upon old and obsolete laws. It does not proceed upon old and obsolete laws. Now, gentlemen, you all see how far this was abolished; one of the first acts of the convention parliament is to make it high treason, to impugn the authority of the convention of estates; but do they say that this necessary defence of the constitution, which renders the impugning the authority of parliament a crime at common law was to be left out? No; they knew better. They knew that government must be supported; and had a convention met at that time, and told this convention of the estates, "You have no power to make such a law, we will resist your authority," they might have been tried, under that statute, for endeavouring to resist their authority. And in queen Anne's first parlia

ment, within four acts of the act 1703, of which we have heard so much, is just the same thing as was done in the convention parliament: "Our soveraine lady, the queen's majestie, with advice and consent of the estates of the kingdom presently assembled in parliament, enacts, statutes, and declares, that the meeting of parliament now convened," &c. "is a lawful and free meeting of parliament, for the ends therein mentioned. And farder, in pursuance of the first act of the first session of this parliament, and without any derogation thereto, it is declared, that it shall be high treason for any person to disown, quarrel, or impugn, the dignity of this present meeting of parliament, upon any pretence whatsoever." And in 1703, it is still stronger in the act ratifying the turning the meeting of the estates in the year 1689, into a parliament. "Our soveraine lady, with advice and consent of the estates of parliament, ratifies, approves, and perpetually confirms, the first act of king William and queen Marie's parliament, dated the 5th June, 1689, entitled an act declaring the meeting of the estates to be a parliament, and of new enacts and declares, that the three estates then met together, the said 5th of June, 1689, consisting of noblemen, barrons, and burrows, were a lawful and free parliament: and it is declared, that it shall be high treason for any person to disown, quarrel, or impugn the dignity and authority of the said parliament. And farder, the queen's majestie, with consent foresaid, statutes and declares, that it shall be high treason in any of the subjects of this kingdom to quarrel, impugn, or endeavour, by writing malicious and advised speaking, or other open act or deed, to alter or innovate the claim of right, or any article thereof." This is the very act immediately preceding that against leasing makers; and when I see these principles of just government prevail among our ancestors, shall I believe that the impugning the authority of parliament, the dignity of parliament, and its authority, should be punished as simple sedition? Why, it is impossible for me to believe it when I read this act.—It cannot fall under the leasing making statutes; it is quite a different thing.—It is arranged in the law books under the head of treason, but still it was sedition before, punishable from the nature of the thing at common law; and if it is not high treason in England, it remains sedition in Scotland, and punishable at common law as such.

I do not mean to enter into any argument upon the subject of transportation; but I have a strong suspicion in my own mind, from various parts of sir George Mackenzie, that he does not so much as mention the word transportation in all his book, though long after the practice of transportation had come in; and I do not say any thing upon this occasion that is not sound. The crime here charged is not leasing making, it is sedition, in the proper sense of the word, sedition at common law. I will not compare the constitution of this country to that of England, because I am unacquainted with it. I am not sufficiently acquainted with their manners, their genius, their temper; but if we are not entitled to punish, at common law, the crime of sedition, I know not what we are entitled to punish. The crime may not apply to the panel; he may be able to state a defence to take it off, or prove circumstances that may satisfy a jury. It is the province of the jury to judge of the intent, and every circumstance relating to it; and it is my duty to declare, that it is my opinion, that this man ought to be committed to the knowledge of an assize.—I have examined this matter with great care, and with anxious care, that I might not do injustice to him on the one hand, and, on the other, that I might do my duty. Upon the whole, I think it was such an intention to resist the legislature of the country, and to bring its power into question, that, in my opinion, I cannot but commit this libel to the knowledge of an assize, in order for them to judge of its criminality; and I am sure they will act with the same candor, and take the same pains that I have done.

Lord *Eskgrove*.—My lord, the subject of our consideration is, not whether this panel is guilty or not; but as no man, by the laws of this country, is put upon his trial before a jury, till the Court have given their opinion, that the facts charged will make out the crime laid, it is our business to consider whether the facts charged in the minor proposition do, if proved, amount to the length of showing that this person, accused, has committed the crime of sedition. My lord, I have no difficulty in giving my opinion, that the major proposition is relevantly laid.—It is usual and proper, for the prosecutor to set forth particularly the different facts, from which he infers the actual commission of a crime, or the intention with which these facts have been committed. It is here stated, that there was a felonious seditious intention, and that such and such circumstances occurred, from which that intention is inferred. It is stated, that there was an illegal association and meeting, which assumed the name of "The British Convention of the Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments."—And my lord, it says, that they "did, in the whole form and manner of their procedure, as well as in the principles they avowed and propagated, clearly and unequivocally demonstrate, that their purposes were of the most dangerous and destructive tendency, hostile to the peace and happiness, and tending to subvert the constitution." That is undoubtedly a relevant charge, if the prosecutor can prove it. Then it goes on to state, that they imitated "the convention of France, the public avowed enemies of this country, with whom Great Britain then was, and still is at war." My lord, I agree with what one gentleman said, that the use of French words

and French terms in this manner, might at one time appear merely as signs of folly, and at another it might appear to admit of another construction: but if you attend to it, you will observe it is imitating a body of men with whom we are at war, and who have rendered themselves objects of horror throughout all Europe. I would be glad to know what could be the meaning of having primary assemblies, departments, and so on, unless they meant to form a sort of legislative body among themselves; and to what end their deliberations were to be applied, we are to judge upon the subsequent facts in this indictment, and upon them alone; namely, the resolution which they took, and the plan which they were pursuing,—they were endeavouring to obtain universal suffrage and annual parliaments. My lord, as to universal suffrage, so far as I know, I never heard that it had obtained in the British constitution, or that it can obtain without overthrowing the constitution; and therefore, though it may be lawful to obtain a change, yet if it is a change of that sort, it goes to show that it was not their intention to improve the constitution, but to subvert and overthrow it; for it is that which I never heard obtained in the constitution, at the happy era of the revolution. My lord, they thought it necessary that they should have a convention;—a pretty thing in this country—a convention; not a convention of men coming together merely, but they were the representatives elected by others; and, my lord, this is thought so important a matter, that they are afraid of any thing happening to prevent their meetings, and therefore here follows, in this libel, a resolution, that if an act should pass to prevent meetings of conventions, they were determined to resist it. My lord, the libel sets forth this resolution:

"That this convention, considering the calamitous consequences of any act of the legislature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our known and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country; and shall continue to assemble, and consider of the best means, by which we can accomplish a real representation of the people, and annual election, until compelled to desist by superior force."

Now, my lord, this determination, if words are plain, is a resolution not to disobey a law already made, but to disobey a law which they expected to pass when it should pass; and when there is any notice given of it, then there is to be a secret convention assembled; that secret convention to declare their sittings permanent, after the manner of the French convention, and they are to continue to sit till they are compelled to desist by superior force. And, in the twelfth page of the libel, it is stated that this panel, at the end of a long speech, immediately after this resolution, told them, "and though by some it may be thought a bold, by some a daring measure, yet it will be found the best for securing the peace of our country; for, if such a law were suffered to pass, if men were not allowed to utter their complaints, a number of fierce and rancorous passions would arise, and we would seek to appeal to that last terrible decision, the event of which is uncertain, but which God and nature allows.

"If the servility of the people had been less; if they had dared to meet, and in place of murmuring, to have told their rulers that there was danger in seeking to deprive them of their liberties, we would not have had to adopt this resolution to-night; but, when I saw the calm deliberate countenances of all present, and the solemn manner in which it was passed, I was convinced that it would not only be a resolution of words, but a rule of action."

My lord, I must confess that I can put but one construction upon these words; that they meant to appeal to the terrible decision of the sword. My lord I shall add no more upon the general relevancy of this charge; I am clearly of opinion that this is sedition, and sedition of the most aggravated nature. My lord, much has been said of real sedition and verbal sedition; some gentlemen seem to think that there can be no such thing as real sedition, for that it would amount to treason. But, my lord, supposing a man to have wrote a paper saying, I propose you shall meet in convention, and you shall have primary assemblies, and shall resolve to resist any law that may pass to disperse them, why, that would be exciting sedition; but here is a body of men actually met together, a combination and conspiracy of a hundred, or a hundred and fifty people in the form of a convention of delegates, resolving to resist the government established by law.

My lord, I am clearly of opinion, that that species of offence,—call it sedition or what you will, I call it the greatest of all sedition,—would have been punishable by the acts of parliament already spoken to by my brother; and I have no doubt that this resolution to oppose the authority of the legislature, to prevent them from making laws, or disobeying those laws when made, is a resolution and a conduct that would have been punishable capitally in former times, and is punishable independent of all the acts regarding leasing making, or what I call calumny of the king and his ministers. But, my lord, it is not only this resolution that I call sedition; but there is another thing, your lordship will ob-

serve what is said in one of the speeches of this gentleman, set forth in this libel. "Let us then endeavour to instruct the people in their rights, and to inform them of our views and our intentions." Your lordship sees they were to instruct the people, and teach them their principles, to inform the country of what their principles and doctrines were, so that if their principles were bad, leasing making is a much inferior species of offence than this.

In the last place, as to what your lordship may propose (if the libel be proven) as a punishment, your lordships have given your opinions on a former occasion, that there is no law restraining you from inflicting banishment by the mode of transportation. If I had had any difficulty before, I own, an authority quoted this day by Mr. Solicitor-General would at once have done away every hesitation upon the subject. Your lordship heard the authority of a judgment of the privy council, which was read upon a libel, laid upon this very act of parliament, and pronounced by judges who were sitting (no doubt most of them) in parliament at the time that act was passed; and therefore, I think there can be no doubt that your lordships are authorized to sentence to banishment by transportation. One of the gentlemen said, that the act of 1708 made it an alternative punishment, either banishment, fine, or imprisonment; but, my lord, the men who drank the pretender's health were condemned to fine, to imprisonment, and also the disqualifications of office, and therefore it was by no means confined to any one of them. I am of opinion, in this case, that your lordship should find the libel relevant to infer the pains of law which is restricted to an arbitrary punishment.

Lord *Swinton*.—My lord, the question now under the consideration of this court is as to the relevancy of the libel. My lords, in the short time that I have sat here as judge, three of these cases have occurred; Muir, Skirving, and Margarot. In each of them I gave my opinion upon the relevancy, as also upon the punishment, and it is very disagreeable to go over the same ground again, especially when gentlemen of more abilities than myself have already done it: for that reason I shall be exceeding short, and only go to where I think the essence of the crime lies.

My lord, the crime charged in the major proposition is, in general, sedition. The facts charged in the minor proposition amount, in my opinion, to this, to a charge of a seditious conspiracy to overturn the established government, the happy government of this country, by force and outrage, if it cannot be done otherwise. I say it amounts to a seditious conspiracy to overturn the constitution by force and outrage if it cannot be done otherwise.

My lord, whether these facts are relevant to infer the pains of law, needs very little consideration. My lord, that it is a seditious conspiracy to overturn the constitution, one need only read the aim and intention of this British Convention, as it is called, "the British Convention of Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments." The gentlemen who have appeared, and displayed so much ability for the panel, have taken a great deal of pains to fritter down what is meant by universal suffrage. My lords, I maintain that it is not only inconsistent with the British constitution, but inconsistent with every constitution or government that ever did exist, or ever can exist, that every mortal who has arms, and legs, and head (and we are all equal,—all of like passions and like judgments with one another), that every one of them shall have equal suffrage—In what? Not only in the election of legislators, but of magistrates, of ministers, and of judges too. Universal suffrage, according to their meaning, is a suffrage to rejudge what judges may do; also to judge whether they will obey an act of parliament or not, and whether the acts of these annual parliaments are agreeable to their mind or not. I will tell you what,—annual parliaments are inconsistent with any government at all; because, if these parliaments should pass an act which these universal suffragants disliked, they have a right, from nature to meet and say this is a wrong act—we did choose these people, but they have gone contrary to our universal suffrage, and we have a right to rejudge them, and overturn what they have done. And I will give it you in the prisoner's own words, if it be true as charged in the libel, in his supposed speech. "If you appoint a man to act as your agent, and make his situation such that he has every temptation to betray you, without incurring the danger of being called to an account, the probability is, that he will sacrifice your interests to his own. It is therefore that a free suffrage of the people is what every man ought to desire, as that alone can make the interest of the representative and his constituents the same."—Now mark this, "The great art of government, I apprehend, is this, that all should be governed by all." That is to say, that the whole of the suffragants, the whole voters, shall be governed by the whole voters.—What is this but saying, that the mob shall be governed by the mob, the multitude shall be governed by the multitude?—Who would be chose a judge by such governors? Because they would rejudge him.—There has been one instance in France, where the revolutionary tribunal and the jury, having found that the people were innocent, these suffragants, these general voters thought the judges did wrong, and they judged them over again; and if the account we have be true, every one of them were carried to the lamp-post. So the plan is, that there should be an appeal from the guillotine to the lamp post; that is the plan of this universal government. He says, "Were all mankind to

assemble in public meetings, one of two things must follow, either they will behave properly or improperly; if properly, their meeting will tend to do good, if improperly, it carries its own cure along with it. The people will be soon brought into a better method by a sense of self preservation, by which they will correct the errors into which they have fallen." That is to say, they would cut one another's throats, and the few that remained would see their folly. But, my lords, farther, this motion of rejudging of every thing, and of the conduct of parliament is carried through the resolution which they came to, before God and the world, that if there should be any proposition for bringing into parliament a convention bill they would resist it. But, my lords, you need only to read these things; they do not need argument. I am therefore clearly of opinion that it is sedition; not only tending to overturn the British government, but every government; and that it is most surely relevant to infer the pains of law.

Lord *Dunsinnan*.—My lords, the consideration of this very point was so lately before us, and the Court gave the same opinion which your lordships have now given, that I think it is unnecessary for me to say more, than that I think, in this case, as I did in that, that this indictment contains matter relevant to infer the crime of sedition.

Lord *Abercrombie*.—My lords, the question which has been so ably argued to day is precisely the same that has been argued before your lordships in the former cases. And, my lord, in the first place, I am now, as I was then, decidedly of opinion, that no good objection has been stated to the relevancy of this indictment. In the second place, I am of opinion, that the objection to the punishment of transportation, founded upon the act of 1703, has no good foundation; and I think so for two reasons. In the first place, that it does not apply to the crime charged against the panel. The crime charged against him is sedition, and sedition of the most aggravated nature. A man may be guilty of leasing-making without being guilty of sedition; and *vice versa*, he may be guilty of sedition without being guilty of leasing-making. In the next place, supposing that act to apply to this precise case, I am of opinion that the sole and whole purpose of that statute was to take away the punishment of death, leaving the power to inflict, according to the circumstances of the case, either simple banishment forth of the realm, or banishment by transportation.

My lord, it was said, that upon looking into dictionaries, it appeared that banishment did not extend to transportation. But, my lord, every body knows that the same word may mean one thing in common language, and have a very different interpretation in a statute; for, to give one example, my lord, heir apparent, I believe, in the English language, signifies a person the eldest son of another during his father's life, as the prince of Wales is heir apparent to the crown; but your lordship knows, that heir apparent in the statute law of Scotland has a very different interpretation; for, by the law of Scotland, a man is not heir apparent to his father till his father be in the grave, and he may possess his estate for half a century in the character of heir apparent; and many other instances might be given. Even if we look into Johnson's Dictionary for the word transportation, he says it is banishment for felony. Your lordship sees, that even if we were at liberty strictly to adhere to the common forms of speech, the argument would not hold good. I have not the smallest doubt that your lordships have a power to banish by transportation.

My lords, the learned counsel for the panel, both of them, concluded a very long and able argument, with a circumstance which I own I heard with regret, because I always regret any circumstance which in my mind tends to aggravate the guilt of a person standing in the unfortunate situation of the panel. Both the one and the other of his learned counsel, in speaking of the punishment of transportation, stated that his case would be extremely hard, because he was a gentleman, a man who possessed talents, qualities, and virtues which would be useful and ornamental to society. My lord, I am very sorry that such a man should be in his situation, because if he should be convicted it aggravates his crime highly. Had he been a man ignorant and uninformed, it might have been some apology for his offence; and though such a man, when he transgresses against the laws of his country, must be punished, yet it would have been a good reason for inflicting the mildest punishment that we could, consistently with our duty, inflict; but, my lord, if such are the qualifications of the panel now at your bar, so much the deeper and more aggravated is his guilt; for, my lord, we all know from the highest authority, that to whom much is given, of him much will be required.

Lord Justice Clerk.—My lords, when the question was before us this day week, the panel applied for counsel, and I was very happy to hear that it coincided entirely with the opinion of all your lordships. My lords, I have attended with the greatest attention to all these questions of sedition, from the first of them down to the present day, and we heard similar questions upon the relevancy of Charles Sinclair's indictment discussed with great abilities at the bar, and also fully discussed by the Court; and I do own,—although I hope I am always open to conviction, in every question that comes before me, whether civil or criminal, yet I say I do own,—that from the first to the last of these questions, I never, at any period, entertained two different sentiments. With respect to the first point, I am sure that much less than what is

laid in the minor proposition would support the crime charged in the major proposition; and with respect to the judgment your lordships have given, I shall only say, that I am very clear we have full power to pronounce that sentence, and that we should not have done justice to the country if we had pronounced a smaller punishment upon any of those cases. I shall therefore not add any more, but that I concur with your lordships in the opinion that the libel is relevant to infer the pains of law.

Thursday, March 13, 1794.

When the Court met, the interlocutor on the relevancy was read over, and the following gentlemen were chosen as jurors:—

David Deuchar, seal-engraver, Edinburgh.
Peter Hill, bookseller there.
John Bell, bookseller there.
James Hunter, merchant there.
Andrew Milligen, watch-case-maker there.
Sir William Forbes, bart. banker there.
Peter Mathie, jeweller there.
Alexander Gardner, jeweller there.
William Creech, bookseller there.
Thomas Hutchison, merchant there.

Mr. *Gerrald.*—My lord, I object to Mr. William Creech; I understand he has repeatedly declared, in private conversations, that he would condemn any member of the British convention, if he should be called to pass upon their assize; and I wish to refer it to his own conscience, and his oath, whether he has not prejudged the principles upon which I am to be tried.

Lord *Henderland.*—My lord, the objection is, that he has prejudged the principles upon which Mr. Gerrald is to be tried; that he said he would condemn every member of the British convention; it is stated in a loose way, it is not stated that he said he would do so whether they were guilty or not; I cannot see that it is a relevant objection; if he had said, he would condemn them whether they were guilty or not, it would have been a good objection, but at present it is too generally laid.

Lord *Eskgrove.*—If the allegation had been, that Mr. Creech had said he would convict Mr. Gerrald, right or wrong, the objection would be good; but if it was only in common conversation that he had such an opinion of the intentions of the British convention, it is not a good objection.

Lord *Swinton.*—I am of the same opinion.

Lord *Dunsinnan.*—I perfectly coincide with your lordships.

Lord *Abercrombie.*—I am of the same opinion.

Lord Justice Clerk.—As this objection is stated, I hope there is not a gentleman of the jury, or any man in this court, who has not expressed the same sentiment.*

* See what occurred in Tutchin's case, Vol. 14, page 1101, and Hawk. Pl. Cr. there referred to. See also the case of O'Connor and others, A. D. 1798, *infrà.*

Mr. *Gerrald.*—Then my trial would be a matter of form merely, because a juryman, by saying out of doors that he would condemn every member of the British convention, takes for granted that very principle which remains to be proved. If a juryman had averred only that he would condemn all the disturbers of the public peace, no doubt he would be well warranted in making that assertion; but, he says, he will condemn them, not because they were disturbers of the public peace, but because they were members of a convention, the illegality of which yet remains to be established. So that your lordships must see that such a general declaration operates to the same conclusion, that he would condemn a man for that which may turn out to have been legal and constitutional.

Mr. *Creech.*—My lord, I never said so; it is impossible that I ever could say such a thing.

Lord *Henderland.*—I think Mr. Gerrald is very ill advised in the way in which he stated the objection? because he has, in fact, acknowledged himself a member of the convention.

[The objection was repelled.]

John Hutchison, merchant, Edinburgh.
John Sibbald, smith there.
Alexander Nisbet, manufacturer there.
William Rankin, taylor there.
Archibald Campbell, brewer there.

Lord Justice Clerk.—Do you object to any of these gentlemen?

Mr. *Gerrald.*—Yes, my lord, I object to William Rankin; and the ground of my objection is this, and I can sustain it by both precedent and principle. It consists in this, Mr. Rankin is taylor to the king; and, of course, being in the pay of the crown, being occasionally in the habit of receiving favours from it, he cannot be a fit person to pass upon my assize.* And, my lord, I will sustain it by precedent. In the trial of Algernon Sidney, which, I trust, will never be adduced as a precedent, except to be violated, it is stated that "the colonel excepted to several of the jury, to some as not being freeholders, and others as being in the king's service, and receiving wages from his majesty." And I find, by the act of parliament, which took place immediately after the glorious revolution for reversing the attainder of Algernon Sidney, the very first causes stated as a ground of reversing the attainder, are, "Whereas Algernon Sidney, esq. in the term of St. Michael,

* In the case of Despard, A. D. 1803, *infrà*, Edward Knipe, esq. was on the part of the prisoner objected to as a juror, on the ground, that he held a place in the lord chamberlain's office during pleasure; but the objection was overruled. See also Vol. 22, p. 1038 of this Collection.

in the thirty-fifth year of the reign of our late sovereign king Charles 2d, in the court of King's-bench at Westminster, by means of an unlawful return of jurors, and by denial of his lawful challenges," and so on. For these reasons the attainder was reversed.

Lord *Henderland*.—The very same objection * was stated in the case of Mr. Muir, and was then repelled.

Lord Justice Clerk.—If it had been the king himself, I do not see that it could be a valid objection.†

[The objection was repelled.]

EVIDENCE FOR THE CROWN.

William Scott, sworn.—Examined by Mr. *Montgomery*.

Does it consist with your knowledge that a warrant was issued to apprehend the panel at the bar?—Yes, he was apprehended on the morning of the 5th of December.

Were you present at the declaration emitted by him that day?—Yes.

Was it emitted voluntarily and freely?—It was.

Was he sober and in his senses at the time?—He was.

Look and see if that is it.—It is; it was emitted upon the 5th of December, and he found bail the same evening.

Did you see him next day?—I did: on the evening of the next day I went to the meeting of the British convention, accompanied by the lord provost, sheriff-substitute, and magistrates, in lady Lawson's yard; when we went in we found that whoever had been in the chair had left it. Mr. Gerrald was standing near the chair speaking to the meeting. Mr. Margarot said, they were met upon a constitutional business to address the king, or something to that purpose, and somebody called out that nothing could be done till the chair was full. Mr. Margarot was called to the chair, and took it. Mr. Davidson then asked if that was the meeting calling themselves the British convention; they replied that they were; upon that he said, "if that is the case, you must dismiss; we are come here for that purpose." Then there was a call for Mr. Gerrald to go on, but Mr. Davidson opposed it, and took Mr. Margarot, who was in the chair, by the hand, and pulled him out, and then there was a call for Mr. Gerrald to take the chair, which he did, and Mr. Davidson made use of the same means to induce him to leave the chair, as he had done to Mr. Margarot, and he submitted to the compulsion; they considered it as sufficient that he was desired to leave the chair, and was taken by the hand. It was then said that it was usual, before dismissing the convention, that they should pray, which Mr. Gerrald did,* and then left the chair; but before he left the chair, as well as at the beginning of the meeting, it was called out that they would remember that the meeting had voted themselves permanent the night before.

Does it consist with your knowledge, that on the evening prior to this, the convention were dismissed by the magistrates?—I was informed so.

When Mr. Gerrald was brought for examination to the sheriff clerk's office, were there any papers brought?—Yes, when Lyon the messenger, and other officers executed the warrant upon Mr. Margarot and Mr. Gerrald, they brought them to the office, with their papers.

What became of those papers?—After Mr. Gerrald and Mr. Margarot were examined, it was proposed that the trunk should be opened, but Mr. Margarot refused to deliver up the key; the trunk was kept till next day, when a warrant was issued to send him to gaol till he did deliver it up; he refused still to give it, but finding there was a warrant issued, he held it in his hand and said, if you choose to take it you may; he stepped aside a little till it was opened, and when he returned he saw the papers looked over, and those that did not apply to the business in hand were given up to them again.

Was it opened in your presence?—Yes, and in the presence of Mr. Davidson, the sheriff-substitute.

Look at that paper.—It is the inventory of the papers found in the trunk.

Were all the papers that were inventoried marked?—Yes.

Would you know them again?—Yes.

Mr. *Solicitor-General*.—Look them over carefully by the inventory, and see if these are the papers so inventoried—are they marked with your initials?—Yes.

[The witness then examined the papers, and compared them with the inventory of the papers found in Mr. Margarot's trunk.]

Witness.—The first seven articles were claimed by Mr. Gerrald, and the others by Mr. Margarot.

Mr. *Montgomery*.—Were any other papers brought to the sheriff clerk's office.—Yes; when the warrant was executed against this gentleman, one was executed against Mr. Sinclair also, at the Black Bull, who was very much indisposed at the time, and his papers remained at the office till he was in a situation to come to be examined.

Were you present when his papers were inventoried?—I was.

Was Mr. Sinclair present?—He was.

Had he an opportunity of perusing it?—It was read over to him.

Did he object to any of the articles being put into it?—No.

* But see Muir's case, p. 133 of this volume.

† So in the original edition.

* See the prayer inserted in Skirving's case, *ante*, p. 471.

Look at that.—That is the inventory of Mr. Sinclair's papers.

[The witness examined the papers, and compared them with the inventory.]

Do you know that there was a warrant issued to apprehend Mr. Skirving?—Yes, at the same time.

Were any papers of his found?—Yes, the warrant was executed by Lyon the messenger, accompanied by Fraser, Mack, and Dingwall.

Were you present when the inventory of those papers was made up?—Yes.

Who brought them to the sheriff clerk's office?—The officers brought Mr. Skirving, with the papers in a bag. Mr. Dingwall put his seal upon them, and Mr. Skirving also, and they remained sealed up in that bag till they were taken out before the sheriff.

Were they taken out in his presence?—Yes.

Are they marked with your initials?—Yes, they are; this is the inventory of them.

Mr. *Clerk*.—My lord, I understand that the convention was not established under the denomination of the British convention, till 19th November, 1793. Now one and all of these papers, as I understand then, that Mr. Scott is going to prove, are of dates anterior to the existence of the British convention, private papers of Mr. Skirving's, which cannot affect this cause.

Mr. *Solicitor-General*.—If these papers were produced for the purpose of rearing up a charge of guilt, founded upon these papers, the objection would be good, because he is only charged with sedition in the convention; but that is not the purpose for which they are produced; they are produced as papers not constituting guilt of themselves, but as circumstances of evidence, which, though I think they are not decisive ones, ought to be laid before the jury.

Lord Justice Clerk.—Are they libelled upon?

Mr. *Solicitor-General*.—They are all libelled upon.

Lord Justice Clerk.—You know you are entitled to prove every fact and circumstance that may establish the panel's guilt, as being art and part in the crime.

Mr. *Solicitor-General*.—It is very possible that the panel may find something among them that may be useful to himself; I do not know whether he will or not; there are nine-tenths of them that I shall not say a word about.

[The witness examined and compared the papers found in Mr. Skirving's possession with the inventory.]

William Scott cross-examined by Mr. *Clerk*.

When did you first see Mr. Sinclair's papers?—On the morning of the 5th of December they were brought to the office, with Mr. Margarot's and Mr. Gerrald's; but as Mr. Sinclair could not be brought to the office at that time, his papers were not opened till about the 7th or 8th, when he was able to come.

How were the papers secured when you first saw them?—Wrapped loosely in a towel.

Were they sealed?—No.

In whose hands did they remain from the 5th to the 7th?—They remained in the sheriff-clerk's chamber, in a locked room.

You said they were inventoried in the presence of Mr. Sinclair?—Yes.

Did he offer any protest upon that occasion?—I cannot recollect.

Try and recollect.—I know he declined answering questions.

Did he offer to take a protest that these were not his papers?—I do not recollect it.

You do not recollect the circumstance of a protest at all?—No.

Who were present besides you?—Mr. Davidson, Mack, and Lyon.

I wish to ask whether, when you went to this meeting, you saw any sign of violence, riot, or disorder?—No. I saw no confusion till the magistrates came there, there was no appearance of a riot.

Do you know whether Mr. Sinclair's papers were opened, by any person whatever, before he saw them?—No, not that I know of—they were locked up and sealed.

Mr. *Gillies*.—Does it consist with your knowledge, that a paper was given to Mr. Gerrald out of the bundle, previous to taking the inventory?—No, not previous to taking the inventory; among the papers there was one which he said was very material to him, and we thought it was of no consequence, and therefore gave it up to him upon the 6th, and a receipt was given for it.

Harry Davidson, sworn.—Examined by Mr. *Montgomery*.

You are sheriff-substitute of the county of Edinburgh?—I am.

Do you know that a warrant was issued against Mr. Gerrald?—Yes.

Was he brought before you in consequence of that warrant?—He was.

Look at that; is that the declaration that he emitted when he was brought before you?—Yes.

Was it emitted freely and voluntarily?—Yes.

Did he appear to be sober and in his senses at the time?—Yes.

Did you observe upon what day that declaration was taken?—I think it was upon the 5th of December.

Did you see Mr. Gerrald next day?—I did, in the evening, at a meeting of the British convention, in a wright's shop, in lady Lawson's yard, at the south side of the town. I went there with the lord provost and some of the magistrates, with a number of peace-officers; there was a very great crowd, the shop

was quite filled when I went in; Mr. Gerrald was speaking: I saw a number of people whom I had seen the night before, particularly Mr. Margarot, and Mr. Gerrald. I asked if that was the British convention? I was told that it was. I told them I was the sheriff-substitute of the county; upon that, Mr. Gerrald went on speaking. I begged that I might be heard; that I was the sheriff-substitute of the county, and was come to disperse the meeting. I addressed myself principally to Mr. Margarot, as he seemed to be the chief person there; I told him I considered the meeting as an illegal meeting, and I ordered the people to disperse; some conversation ensued upon that, and he told me they were a peaceable and constitutional meeting; that if I would hear what was then going on, I should be satisfied that they were what he said they were, and that they were then meeting upon a petition to parliament; and he showed me a paper, lying upon the table, with the words "petition to parliament" written upon it. I told them that I came for the purpose of dispersing them, and that I was determined to remain there till they were dispersed; finding that I was determined to disperse them, Mr. Margarot, with the approbation of the meeting, took the chair, and said they should not dissolve till force was used. I told them I hoped force would not be necessary; that I had force with me, but should be sorry to be under the necessity of using it. He said some mark of force was necessary to be used; upon which I took him by the hand, and desired him to come out of the chair: it was a friendly shake of the hand, but he thought that was too slight; I then put my hand to his shoulder, and he came out; they seemed to think that I had committed an assault upon them, and threatened to prosecute me; I laughed at them. Mr. Gerrald was then called to the chair, and I made use of the same kind of force with him; after that he made a prayer, which they said was the usual way of breaking up the assembly, and I certainly allow that I staid till I saw them all out of the room; I then locked the door and took the key. Mr. Margarot said it was unnecessary to disperse them, for they had declared themselves permanent. In answer to that, I said it might be so, but they certainly should not meet any where in the county; that if they did, they should be dispersed in the same way that they were that night.

When Mr. Gerrald was brought before you, were there any papers brought with him?—Yes, Lyon, the messenger, who apprehended Mr. Margarot, Mr. Gerrald, and Mr. Sinclair, brought a number of papers in a locked trunk; which, he said, contained the papers of Mr. Margarot and Mr. Gerrald; they were not opened till the next day.

Who had the key?—Mr. Margarot; he refused to give it up till a warrant was issued to open it by force.

Was it opened next day in your presence?—It was.

Was there an inventory made of them?—Yes.

Was Mr. Margarot and Mr. Gerrald present?—They were both present.

Look at that paper.—This is the inventory.

Did you sign it?—Yes. Mr. Scott selected those which he thought any way necessary, or connected with the charge against him, and gave the rest back; an inventory was made of those that were retained, which is this in my hand. I see the papers that belonged to Mr. Gerrald, have not my initials.

Were they marked by Mr. Scott?—Yes, they are marked both with Mr. Scott's and Lyon's initials; those claimed by Mr. Margarot, are marked with my initials.

Were there any papers said to have belonged to Mr. Sinclair?—Yes, some of them were given back to him, and some of them were retained.

Is that paper an inventory of them?—Yes, it is marked with my initials.

Was Mr. Sinclair present when they were so marked?—Yes, he was.

Do you know of any papers of Mr. Skirving's being brought to the office?—Yes.

Were they inventoried before you?—Yes, they were.

Look at that.—This is the inventory of them, and this is the scroll of the minutes of the convention which was found at Mr. Skirving's.

Was Mr. Skirving present when that inventory was made up?—Yes.

Mr. *Clerk*.—My lords, some of the papers libelled upon are not here. In the inventory of papers there is one mentioned, "The rules, orders, and regulations of the meeting called the British Convention," which is wanting; for any thing I know that may be a very material piece of evidence, to show what was the particular nature of the convention, and with what particular views, and for what particular purposes they met; and it is a very great defect in the evidence indeed, that the public prosecutor, after libelling upon these writings and inventorying them, has not produced so material a paper as this. I was entitled to come here, trusting that this paper would be produced by the public prosecutor. I say that paper containing the rules, orders, and regulations of the British convention, is a material paper, and he does not produce it.

Mr. *Solicitor General*.—The libel bears, that certain inventories are to be produced, and the papers mentioned in those inventories; the gentlemen might have known two or three days ago, what were to be produced, and what not; and it was incumbent upon him to have inspected them; and, if any were wanting, to apply for a diligence to enforce their production.

Lord Justice Clerk.—The public prosecutor libels upon such and such papers; it was your duty to see if those papers were in the clerk's hands, and if they were not, you could have applied to the Court, and got a diligence for the recovery of it.

Mr. *Solicitor General.*—And this happens to be a printed paper, of which they must have one hundred copies in their possession.

Mr. *Laing.*—I do not know how we were to get a diligence when we did not know in whose possession it was.

Mr. *Montgomery.*—Here it is, my lord, I have found it among the papers; here are eleven copies of it; in going over the papers Mr. Scott happened to miss it.

Harry Davidson, cross-examined by Mr. *Clerk.*

It is hardly necessary to ask, whether you observed any thing like scenes of riot or tumult in the convention?—None at all.

When did you first see Mr. Sinclair's papers?—The messenger, Lyon, brought them along with the other papers, at the time Mr. Gerrald and Mr. Margarot were apprehended; but Mr. Sinclair being unwell, and confined to his room, he was not, on that account, brought to the sheriff-clerk's office at that time.

In what way were they brought to the office?—Tied up in a handkerchief. Lyon told me they were papers of Mr. Sinclair's, but I did not touch them. They were wrapped up and tied, but I did not observe any seal.

I think you said they were inventoried in Mr. Sinclair's presence?—Yes.

Were you present?—Yes.

Did he sign it?—No.

What did Mr. Sinclair say?—did he deny those papers to be his?—I do not recollect that. I think he acknowledged that they were his; because, when the papers were selected, and part of them given back to him, he received them as his.

Was any mention made by Mr. Sinclair of a protest?—I really do not know; one of the gentlemen did, but there were so many of them, that I cannot say whether it was Mr. Sinclair or not.

You are uncertain whether he took a protest or offered one?—I cannot say. I do not think Mr. Gerrald made use of the word protest; either Mr. Sinclair, Mr. Skirving, or Mr. Margarot did, but I cannot say which.

Do you recollect that he gave any reason for not signing the inventory?—He refused to sign it, because he thought it was a wrong step, contrary to law.

Did he say any thing more as a reason for not signing it?—Upon my word I do not recollect. The sum of what he said was put down in his declaration.

Can you say, from your own knowledge, that all proper and necessary means were used in order to prevent any other papers being introduced into the bundle; or, on the other hand, to prevent any papers from being taken away from that bundle?—I cannot say that I had any particular access to know the fact, for I did not see them till they were afterwards opened in my presence.

Were they sealed up before they were opened?—I do not think his papers were sealed.

Is it not usual, in these cases, to seal up the papers to prevent any from being taken away, and to prevent others from being put in?—Yes.

How was it that it was omitted upon this occasion?—I cannot say; there was a great deal to do in the office; I was there from before nine in the morning, till between nine and ten at night; the papers were lodged by the messenger in the sheriff-clerk's hands.

Mr. *Solicitor General.*—You say they were opened in the presence of Mr. Sinclair?—Yes.

Did he say there were any of the papers that were not his.—Mr. Gerrald, Mr. Margarot, and Mr. Sinclair staid in the same house together; and I remember one or other of them saying there was a paper that was not his, that it belonged to one of the other gentlemen.

Did Mr. Sinclair acknowledge those papers to be his?—When Mr. Scott selected them, Mr. Sinclair sat by him; and what papers Mr. Scott did not think necessary to retain, he gave back to Mr. Sinclair.

Lord Dunsinnan.—Did Mr. Sinclair see and know that they were marked as his papers, and made no objection to them?—Yes.

One of the Jury.—What length of time might elapse between the time that the papers were brought to the office, and the time when they were opened?—They were taken upon the Thursday, and they were not opened till he was able to come for examination, which was on the Saturday forenoon.

Do you know, of your own knowledge, who brought those papers?—was it Lyon?—Lyon brought them into the office himself, in my presence, and said they were Mr. Sinclair's papers.

Did Mr. Sinclair take any concern in what was passing, as to the inventory?—Not any thing farther than putting into his pocket those that Mr. Scott returned to him.

Lord *Henderland.*—Do you know where they were kept, from Thursday to Saturday?—I do not of my own knowledge; but I think, when I asked Mr. Mack, he said they had been under his own lock and key.

Mr. *Gillies.*—Was Mr. Sinclair desired, upon that occasion, to sign the inventory?—Yes he was.

Did he sign it?—I think he did not. In the first place he declined to sign his declaration, because he considered himself improperly brought before me; and I think he mentioned, that as he had declined to sign his declaration, he should decline to sign the inventory of course.

Mr. *Solicitor General.*—Did he complain of papers being taken from him under a general warrant as an illegal thing?—I do not know that he said any thing about general warrants; Mr. Margarot did, but Mr. Sinclair was much milder.

Mr. *Gillies.*—The witness has said he refused to sign the inventory for the same reason that he refused to sign the declaration.

Now, the fact is, that the declaration is signed by Mr. Sinclair.

Witness.—That is a circumstance that I had forgotten.

Mr. *Solicitor General.*—The fact is, he signed the first page of the declaration, and refused to sign the rest; that is the fact.

James Lyon sworn.—Examined by Mr. *Montgomery.*

Did you execute a warrant against Mr. Gerrald and Mr. Margarot?—Yes; I went to the Black Bull to inquire for these gentlemen; the waiter acknowledged they were in the house, but declined going with me to their rooms; he told me the number of their rooms, and the first room I went to was Mr. Gerrald and Mr. Margarot's. I knocked at the door, and they desired me to come in, which I did. I told them I had a warrant to carry them before the sheriff; they were in bed; they got up immediately; I collected together the papers that were in the room. Mr. Margarot proposed putting them in a trunk, and asked Mr. Gerrald if he would put his into it, he consented; they were all put in, and Mr. Margarot took the key into his possession. When he was coming away, says he, "I do not give you the trunk, you may take it at your peril." I told him I was not scrupulous about that, and immediately gave the trunk to a chairman, to put it into a coach. I looked out Mr. Sinclair's papers likewise, and took them at the same time.

Speak to Mr. Gerrald's and Mr. Margarot's papers first.—I must rehearse this: when we came to the sheriff-clerk's office in the coach, I left the trunk and the other papers in the office, and sent a message to Mr. Scott to inform him of what I had done, and then I got a message from him to bring Mr. Sinclair in a chair. I went to Mr. Sinclair and told him; and then there came a message that they wondered I was so long; and then there came another message to let him remain at his lodging, which I did till between 9 and 10 o'clock at night.

When was the trunk opened?—I think it was two days after.

Were you present when it was opened?—I was.

Who had the key?—Mr. Margarot.

All the time?—I know nothing to the contrary.

Was there any inventory made up of the papers?—Yes, at the sheriff-clerk's office; there was none made at their lodgings. When the trunk was to be opened, Mr. Margarot would not give up the key, and it was proposed to get a smith to break it open, but it was delayed that day. The next day Mr. Margarot was brought before the sheriff-substitute and Mr. Scott; he said he would not give it up, but held it in his hand, so [representing the manner of it], and said it must be taken from him by force; Mr. Scott was going to take it from him, but Mr. Davidson said no, he must not do it, some other body must do it, and then Mr. Mack gave a gripe at it, and took it from him; it was then opened, an inventory was made, and I put my initials at the back of it.

Look at these papers, and see if these are the papers you found in Mr. Gerrald's room.—Yes, thy are; they have my initials upon them.

Was Mr. Sinclair in a separate room from Mr. Gerrald and Mr. Margarot when you executed the warrant?—Yes.

Were the papers separate?—Yes.

And you brought them with you to the sheriff-clerk's office?—Yes; and Mr. Margarot and Mr. Gerrald were in the chariot with me.

What did you do with Mr. Sinclair's papers?—I left them in the sheriff-clerk's office.

Were you present afterwards, when they were opened?—Yes.

How long after, was it?—I am not certain; it might be a few days after.

Did they seem to be in the same situation as when you brought them into the office?—They appeared to me so; they were in my handkerchief, my name was in the handkerchief.

Were you present when the inventory of them was made out?—Yes.

Was Mr. Sinclair there?—Yes.

Were any papers given back to him?—Yes.

Did he take them?—He took all that were given him, which was some that were not considered material to the business in hand.

James Lyon, cross-examined by Mr. *Clerk.*

You have said that you carried Mr. Sinclair's papers to the office yourself?—Yes.

And left them there?—Yes.

Was there any objection made by any person concerning the manner in which you had secured those papers in the sheriff-clerk's office, or any where else?—did nobody tell you it was exceedingly dangerous to keep those papers unsealed up?—I do not recollect any such thing.

Did nobody say that other papers might be put in, that did not belong to Mr. Sinclair?—To the best of my remembrance no person stated any such thing; and, with humble submission to you, my lord, I went from the sheriff-clerk's office to bring off Mr. Sinclair, and I was not back till 9 or 10 o'clock at night, so that the papers were in the sheriff's-office all that time.

Did you take any notice of Mr. Sinclair's papers when you seized them?—I found some of them lying upon the desk, and one paper I got lying below the bed.

Have you any other means of knowing that these are the same but that of knowing your own handkerchief?—Upon my word I do not think there was any thing else.

Mr. *Solicitor General.*—At the sheriff-clerk's office, did you deliver them into any body's custody?—There were two of Mr.

Scott's clerks there, Mr. Mack and Mr. Dingwall; but I was so hurried I was not there, I dare say, five minutes; but I think I desired them to take care of them.

A day or two afterwards, when you saw this bundle opened, had you any reason to believe or suspect that any alteration had been made?—No, none at all; they appeared to me to be in the same state.

Mr. *Gillies*.—Did you see Mr. George Sinclair at any time with Mr. Charles Sinclair?—Yes.

Did he say any thing to you upon this subject, about their being tied up loosely?—recollect yourself.—I will. Have patience, and I will recollect.

Lord Justice Clerk.—Who is Mr. George Sinclair?—He is Mr. Sinclair of Bridge End. I have some faint remembrance that he said something about an inventory, but I do not recollect that it was while I was with Mr. Charles Sinclair; I do not know but it was after they were examined, I am not sure.

Mr. *Clerk*.—Was Mr. George Sinclair present when the inventory was taken?—He was not in the sheriff-clerk's chamber that day.

Did you see Mr. George Sinclair either before or after taking the inventory?—I saw him that day that I was waiting with Mr. Charles Sinclair; and, if I mistake not, he was over at the office, but I think not the day that the papers were examined.

Have you any recollection of any thing of this kind being said by Mr. George Sinclair?—I cannot say; I cannot be positive; I am upon my oath, and I must be guarded in every respect.

Did he not tell you that it was wrong and dangerous not to inventory these papers when they were seized?—To the best of my recollection he said something, that it was a pity but there had been an inventory, or something of that nature.

Joseph Mack sworn. Examined by Mr. *Montgomery*.

Do you attend the sheriff-clerk's office?—Yes.

You are clerk there?—Yes.

Were you present at the execution of the warrant against William Skirving, secretary to the British convention?—Yes.

Did you see the papers found in his possession?—Yes.

Was there an inventory made of them?—Yes; they were put into a bag, and sealed by Mr. Dingwall and Mr. Skirving.

Did you see the inventory of them?—I came in while the declaration was making, and I saw the inventory made out.

Were the papers acknowledged by Skirving?—Yes; and the papers that were of no consequence were given back to him.

Did he acknowledge these papers to be the same that were put into the bag?—Yes.

Were you in the sheriff-clerk's office when some papers were brought in a trunk?—Yes.

Who brought them?—I believe it was James Lyon, the messenger; the trunk came into my possession very soon after.

Did you write an inventory of the papers in that box?—Yes.

Were any other papers brought besides those that came in the box?—There were some papers which came in a napkin.

Did you keep those papers?—Yes.

Did you keep them locked up?—Yes.

Did you see an inventory made of them likewise?—Yes.

And they were in your possession till the inventory was made?—Yes, and after it too.

Lord *Eskgrove*.—During the time it was in your possession, were there any papers taken out or any put in?—None

Mr. *Solicitor General*.—Was it under your lock and key all the time?—It was.

Mr. *Montgomery*.—Have you the charge in general of all the papers in that office?—Yes.

Is that the inventory that was made up of Mr. Sinclair's papers?—It is.

Look at the bundle of papers and see if they are the papers in the inventory.—[Looks over them.] My initials are upon the back of every one of these papers.

Do you see Mr. Scott's initials upon them likewise?—Yes, and Mr. Davidson's likewise.

Joseph Mack cross-examined by Mr. *Clerk*.

You spoke of some papers being brought loose in a napkin.—Were you in the office when they were brought?—I cannot say positively that I was in the office, but I got them soon after.

You cannot recollect then, positively, who put them into your hands?—I believe I found them in the sheriff's room.

Lord Justice Clerk.—Was the sheriff there himself?—Mr. Davidson, Mr. Scott, and Mr. Dingwall were in the room.

Mr. *Clerk*.—Were they under the charge of any particular person?—No; they were lying in the room, and I took them away.

I think you said these papers were afterwards locked up?—Yes.

When did you lock them up?—After the examinations that day were finished.

At what time was that?—I cannot exactly recollect; it might be about nine o'clock.

Lyon brought these papers loose in a napkin, and the box was locked?—Yes.

Lord Justice Clerk.—And the napkin was not locked?—No.

Mr. *Clerk*.—Is it not usual when you seize papers to seal them up?—Yes.

Were you present when the inventory was taken?—Yes.

And Mr. Sinclair was present?—Yes.

Were you present when an objection was taken, either by Mr. Sinclair or for him, upon the ground that the papers were not sealed up?—I do not recollect it.

Do you recollect Mr. Sinclair's declaration upon taking the inventory?—Yes.

What did he say when this was doing?—He seemed very easy upon the business, and behaved very much like a gentleman

Did he say the papers were his?—He did not deny that they were his; he took back the papers that were returned to him.

Did he say any thing about a protest?—Yes, he offered to take a protest, and Mr. Davidson told him it was not usual to receive protests in these cases.

Upon what ground did he offer to take a protest?—Because his papers were taken from him, as he imagined illegally.

John Dingwall sworn.—Examined by Mr. *Montgomery*.

Were you present at a search made in Mr. Skirving's house for papers?—Yes.

Did you find any papers there?—Yes.

Were they put into a bag in your presence?—They were put into two bags.

And were they sealed?—Yes.

In Mr. Skirving's presence?—Yes, I put my seal upon one end, and he put his seal upon the other.

Did you see those bags afterwards?—Yes.

Where?—In the sheriff-clerk's office.

Look and see if these are any part of them?—This paper, or scroll of minutes, I found lying upon the table in Mr. Skirving's room.

Did you see an inventory made up of these papers?—Yes.

It was fairly made up?—Yes.

Did you assist in making it up?—I made out Mr. Skirving's declaration.

Were you present when Mr. Sinclair's papers were brought into the sheriff-clerk's office?—No.

Thomas Cockburn sworn.—Examined by Mr. *Anstruther*.

Did you belong to the society of the Friends of the People?—I was a member of that society.

Were you a delegate to the convention that met in Edinburgh in October last?—Yes.

Did you attend that that afterwards met in November?—Yes; the British convention.

What was the occasion of the meeting of the second convention in November?—The occasion, so far as occurs to me was, the arrival of some delegates from England.

Was the panel at the bar one of those delegates from England, in consequence of whose arrival that second convention met?—I always understood that Mr. Gerrald was one of them.

When you first met in October, what did you call yourselves?—The convention of the Friends of the People; and afterwards the British Convention, as I understood, but I was not present at the time.

Did you attend frequently?—I attended frequently, and was absent frequently.

And what title did you give each other?—There were various designations, but citizen was the one they most commonly used.

When you were divided into smaller bodies what did you call yourselves?—They were first, I think, denominated divisions; afterwards sections, and there was another name which I do not recollect.

What name were they most frequently called by?—I do not recollect at present.

Do you recollect any institution of what was called Primary assemblies;—No.

Do you recollect their being divided into Primary Societies?—No.

Did you ever hear departments mentioned?—I do not recollect.

Had you different kinds of committees appointed?—Yes.

Do you recollect the names of any of those committees?—I think there was one of them designed the committee of union.

Had you any committee of organization?—I think there was.

Was there any that took charge of your money matters; how was that designed?—They were not very regular; but there was a committee instituted for that purpose, which was usually called the committee of finance.

And likewise committees of instruction?—I do not recollect that.

For instructing different parts of the kingdom, such as the Highlands, and giving them political knowledge?—There was a motion, I recollect, for promoting constitutional knowledge.

Do you recollect that there was a committee for that purpose?—So far as I recollect at present there was mention made of a committee for promoting constitutional knowledge.

Had you likewise a committee of secrecy?—It may be called a committee of secrecy, but there was no name that I know of given to it by the convention.

Which carried on its proceedings more privately than the other committees, from which it got its name, I suppose of a committee of secrecy?—Yes.

When you met what did you call your meetings?—They were most frequently called Sittings; but I paid very little attention to that circumstance.

Did you ever hear of any person who had deserved well getting the honours of the sitting?—I think I have heard in one of the committees some such thing of a single person; humorously it might have been mentioned by some humourous man, and I do not doubt but it might be taken down in the minutes, but those minutes were never authenticated by the convention, because it was designed that they were to have a committee to revise them.

Lord *Eskgrove*.—Was any person, a stranger, ever admitted to a sitting in the convention?—All I recollect is, that the honours of the sitting were mentioned.

Lord *Eskgrove*.—To the best of your recollection, was any stranger ever allowed to sit in the convention, upon a motion of that

sort?—I do not recollect. I think I recollect it was rather honourable mention than honours of the sitting that I heard.

Mr. *Anstruther*.—When you received pecuniary assistance, was honourable mention made of it?—It is that that occurs to my recollection most, but I cannot be very positive; I only recollect something of the word honourable mention, or something of that nature.

How did you date your proceedings on what took place in the convention? Did you take the year of God in the common way, or in any other way?—I cannot recollect.

Did you ever hear of the first year of the British convention, for example?—I cannot recollect; I never looked in the minutes.

Was it not the practice in the convention to read over the subsequent day what passed the day before? I was not there till the business of the day was generally over.

Did you never hear what was the manner of their dating their minutes?—I do not recollect any thing about it; I cannot say either one way or the other; I was seldom present when that business was done; but I once remember hearing it read before the convention went to business.

Lord Justice Clerk.—Have you no recollection of hearing of the first year of the British convention?—I think I remember hearing something of that kind; but I cannot say upon what occasion.

Mr. *Anstruther*.—Did you ever see the panel there?—Yes.

Did he frequently speak there?—Not so frequently as others.

Did he ever act as preses?—I do not recollect ever seeing him act as chairman in my life.

Did you ever see him act as chairman at any of the committees?—I was not a member of any of the committees.

Did you happen to be present at a meeting on the 21st of November, when the measure of a general meeting of the Scotch and English delegates was proposed?—There was a committee of union appointed to draw up regulations with respect to the people in England and the people in Scotland, whose minds might be one, with respect to the subject of reform, in order that they might be united in their endeavours.

Do you recollect upon that occasion the panel at the bar making a speech? and you say he made a few speeches, so that you will be the better able to recollect?—I said he did not speak so frequently as some.

Do you remember that speech?—I think there was a conversation one evening with respect to the union, and to the best of my recollection he did speak upon that occasion; I was there part of the time.

Were you at that time in the practice of reading the Gazetteer when published?—I used to read part of them.

Did you read that in which Mr. Gerrald's speech appeared, of which you say you heard a part?—I cannot say but I might have seen it, but at this distance of time I can say very little about it. I make no doubt but I read it.

Did you think that the account you saw in the paper agreed with what you heard in the meeting?—My memory is not so tenacious as to recollect a long speech; I cannot be very positive.

But in substance did it appear to you to be the same that was delivered by Mr. Gerrald?—All I can say is, that I am ready to give a candid answer to any thing that I know; but as to what may be read from a newspaper, I cannot say.

Mr. *Solicitor General*.—The question is, whether the account given in the Gazetteer agreed with what you heard in the convention?—So far as I recollect, I did not observe any thing remarkably deficient in it.

Look at that paper and read it.—With respect to newspapers, I hope the Court will allow me this, which I think is fair, that any question that is put to me, or read to me, I shall endeavour to give a fair answer; but as for reading it, I will not be concerned with it.

Mr. *Anstruther*.—Were you present when a motion was made, by Mr. Callender, to this purpose, "that in case the minister, or any other member, bring into the House of Commons a motion for a convention bill, as passed in Ireland, for preventing the people from meeting according to their just rights by the revolution, the same motion shall be noticed to the delegates of the respective societies, immediately to meet in convention to assert their rights?—To the best of my recollection, I heard a motion of Mr. Callender's read one night to that purport.

Was that motion made the subject of discussion at a future meeting?—I do not recollect being present upon that business till it was taken up as a report returned from a committee.

Who was it that read that report?—I think it was Mr. Sinclair.

Did you read those parts in which the minutes of this convention were given an account of?—Yes.

Was any resolution adopted in the convention in consequence of this report?—So far as I recollect, the convention conversed upon the report a long time; and, if I remember right, they agreed, that in case of a convention bill, similar to that which had passed in the parliament of Ireland, being brought into the parliament of England, that that should be considered as a reason why they should hold a meeting, which was mentioned as a meeting of emergency.

Did you hear of any other cases in which they were to meet?—I think there were others in the report; but I am not able to say positively whether they were taken into the consideration of the convention.

Do you recollect any other cases?—I think

one of them was a suspension of the Habeas Corpus act; and I think there was mention made of the landing of foreign troops, or a foreign invasion, I am not certain which.

Lord Justice Clerk.—Did you think they might not be both used?—I cannot say.

Mr. *Anstruther.*—What troops did you suppose those foreign troops were?—I cannot say; it might be the troops of any country; it was in a general sense.

Did you suppose they were to meet upon the landing of troops who were our allies, though not British troops; for instance, Hessians and Hanoverians?—As to the intention of that, it is what I cannot enter into.

Upon the oath you have now taken, did you hear that the convention were to meet upon the landing of Hessians or Hanoverians in this country?—I cannot recollect.

You have mentioned three cases of emergency; was any mention made of the suspension of the act for preventing wrongous imprisonment?—I do not recollect.

Where were they to meet?—I know not.

Who was to fix the place of meeting?—To the best of my recollection, there was a committee appointed for that purpose.

Were they to keep it secret till it happened?—They were not to tell it; there was a confidential trust reposed in a few, that they were to fix the place and find ways and means.

Was there any mention of sealed letters being delivered to them, fixing the place of meeting, which were not to be opened till delivered by the delegates to their constituents?—I think I heard a mention made of sealed letters, but then I do not say that that was the mode that was determined.

What number was to proceed to business in case of these events happening?—I cannot be positive upon that subject.

Was this resolution come to in a more solemn manner than any other resolutions in the convention?—So far as I recollect, the convention deliberated upon it in a very decent, serious manner; and at last, they resolved it standing.

They all stood up, to declare their purpose of carrying it into execution more solemnly than usual?—We all stood up; and I think we did so upon another occasion.

Do you recollect what that other occasion was?—I rather have heard of it than was present at it.

Was it at the proposal for a union?—I was not present.

Or upon their changing the designation of their meeting to that of the British Convention?—I was not present.

Did they, in passing this resolution, declare before God and the world, that they would do so and so?—I recollect the expressions before God and the world were made use of.

Did you ever hear such solemn expressions made use of upon any other occasions?—I do not recollect.

Did the panel make a speech upon that occasion, after this resolution was so solemnly passed?—So far as I recollect, Mr. Gerrald did speak, after the resolution.

Did you pay attention to his speech?—Yes.

Did you afterwards read that speech in the Gazetteer?—I do not doubt but I might, in reading the Gazetteer.

And did the account in the Gazetteer much differ from what you had heard?—I can say no more than I have already said, that I did not observe any thing remarkably erroneous in it.

Was it a cool deliberate kind of speech, or was it warm and animated?—I do not recollect; but Mr. Gerrald spoke in his usual tone.

Thomas Cockburn cross-examined by Mr. *Clerk.*

You said you were a member of the convention; what did you understand to be the purposes for which they met?—The purposes in general, for which the convention met, was a reform in the British House of Commons.

By what means did the convention intend to accomplish this reform?—The means, so far as I understood, that they intended to use was, to endeavour to collect the minds of the people who were of the same opinion, and, by legal methods, to obtain their object, in a peaceable manner, so far as I understood.

Were they to petition parliament?—It was agreed upon in the convention, as I understood, in October; but I was not present.

What did you understand to be the object of the British convention which met in November?—I understood nothing essentially different from the convention that met before; the only difference was, the accession of a number of delegates from England; their design I understood to be the same.

You have been asked, whether Mr. Gerrald made a speech upon the 21st of November; now I beg leave to read it over to you, and then tell me if you recollect Mr. Gerrald making such a speech?—If there are any words that I recollect I shall tell you.

Mr. *Burnett.*—He has already said, that when he read the Gazetteer, there was nothing essentially different.

Mr. *Clerk.*—He said, that he generally read the Gazetteer, and he perceived nothing remarkably deficient; he spoke generally. I have not yet heard the witness say, that he heard Mr. Gerrald make this speech, which seems to be principally founded on in the indictment; and therefore I conceive it necessary, that the fact should be ascertained, whether the witness heard that speech, yea or not.

Mr. *Solicitor General.*—I can certainly have no objection, except this, that the witness has been examined on the part of the prosecutor, and has given all the answers that he can give.

Lord Justice Clerk.—There is one observation I shall make to the gentlemen of the jury; that this witness has attended several meetings of the convention, and when he was there, Mr Gerrald made some speeches, although not so many as some other people did; and he tells you he was induced to read the Gazetteer, at least, so far as related to the proceedings of the convention. The speeches made to-night are published in the Gazetteer to-morrow, and I would ask whether that witness's comparative view of the speeches at that time, or so long after, is most likely to be right.

Mr. *Fletcher.*—He says there was nothing remarkably erroneous: now that appears to me clearly to imply that there was something erroneous.

Lord Justice Clerk.—It does no such thing.

Lord *Henderland.*—The way that I have taken it down is this, that he did not observe any thing remarkably deficient or erroneous in the speeches in the Gazetteer; that he does not doubt but he may have read it in the Gazetteer, and did not recollect any material difference.

Mr *Fletcher.*—Your lordship will allow me to explain my meaning: the words are, that he observed nothing remarkably erroneous; I submit to your lordship, and to every man who hears me, if that does not imply that there was something erroneous; it may therefore happen, that upon reading it over to the witness, he may say that those parts charged as most criminal are erroneous.

Lord Justice Clerk.—I deny the conclusion Mr. Fletcher has drawn from his premises; the plain meaning is, that there was no remarkable difference.

Mr. *Gillies.*—It is certainly true, that his recollection must have been more accurate then than at present; but this is equally true, that the witness, having just heard these speeches, would not read them with that attention that he might if he now read them: for my own share, in such circumstances I should not have read it at all.

Lord Justice Clerk.—I think the witness's own idea of the matter is very different: he says, he read over the Gazetteer and observed nothing remarkably deficient. What do your lordships say? shall it be read, yea or nay?

Lord *Henderland.*—I do not see any particular reason why it should not be read.

Mr. *Solicitor-General.*—Let the witness read it himself.

No, I beg to be excused; I think I should remember it better by hearing it read than by reading it.

[The clerk of the court then read the speech from the Gazetteer.]

Mr. *Clerk.*—Do you recollect reading the speech you have now heard in the Gazetteer?—I think, so far as I recollect, that it is the same.

Do you think it has mistated any thing that was delivered in the speech?—I think, in the course of reading, I recollect a great many words interspersed through this speech, that I recollect Mr. Gerrald spoke in the course of a speech one evening; but I do not mean to identify the whole speech.

You mentioned a motion of Mr. Callender's when you were present?—I heard a motion made which I understood to he a motion of Mr. Callender's.

It was read to you from the indictment, but I shall read it to you again—"That in case the minister," &c. [reads the motion from the indictment.]—I think you said, to the best of your remembrance, this was the substance of the motion you heard?—Yes.

I shall now read it from the minutes of the convention; "That in case the minister bring into the Commons House of Parliament a motion for a convention bill, it shall be noticed immediately to the delegates." You will observe this is a much shorter motion, and something different; now which of these, according to your recollection was the real motion you heard at the time?—Who had the management of the business I cannot say; but the thing that was first read was similar to what I heard.

Mr. *Solicitor General.*—Mr. Clerk has had one speech read to this gentleman, I desire that the other may be read, and he will say whether he recollects any material errors.

[The clerk then read the other speech from the Gazetteer.]

Mr. *Solicitor General.*—Now, is this nearly the subtance? or do you recollect any great difference?—I recollect considerably less of that than I do of the other; the beginning of it I do not recollect at all.

Lord Justice Clerk.—Did you read the Gazetteer when it was first published?—I was in the habit of reading the Gazetteer.

Lord Justice Clerk.—It gives me great pleasure to hear a witness, who was a member of a convention like this, give his evidence fairly, like an honest man?—I wish the gentlemen of the jury to understand that I have not identified the speeches in the Gazetteer.

Mr. *Solicitor General.*—We know you have not; nor shall any body say that you have.

Mr. *Clerk*—I observe a great many sentences in this indictment printed in italics; and I take notice of this, that the jury may be upon their guard, and not suffer themselves to be misled by that means.

Mr. *Solicitor General.*—It is very wrong, that there was any part of it printed in italics, and how it happened I do not know; but all I can say is, to desire the gentlemen of the jury to pay no regard to them.

Alexander Aitcheson sworn.

Lord *Dunsinnan.*—Has any body offered you any reward, or promise of reward, for giving evidence here?—None.

Has any body told you or instructed you what to say?—If his majesty himself had instructed me what to say, I would not have regarded it.

Have you any malice or ill-will against the panel at the bar?—No, far from it; I consider him as a second LYCURGUS, a voluntary exile for the good of his country, and for the same reason too;—a wish to give a better code of laws to his countrymen than they have hitherto enjoyed.

You were a member of the British convention?—Yes, I had that honour.

Lord *Dunsinnan*.—You will remember that whatever you may say regarding your own conduct, you cannot be made an object of prosecution for.—My family is doubtless obliged to the public prosecutor.

Examined by Mr. *Anstruther*.

You were a member of the convention of October?—Yes.

That was given up?—Yes, after they had sat four days.

When was it resumed again?—I do not at present recollect, but it was some time in November.

Were you a delegate?—Yes.

Did not you give in a resignation?—Yes, I gave in my resignation, as I had not time to attend regularly, but it was not accepted, and I did therefore attend occasionally.

What was the occasion of their meeting the second time?—Because the delegates from England did not arrive in time enough, and therefore we were called together again upon their arrival.

Who were those delegates?—There were four or five of them: there was citizen Margarot, citizen Yorke,* who I believe has since died abroad, citizen Browne, citizen Sinclair, and the panel at the bar.

When you first met in October, and afterwards in November, by what designation did you pass?—The convention of delegates.

Did you change that designation?—Yes, to that of the British convention.

What was the purpose of your meeting?—To obtain a reform in parliament, by annual parliaments and universal suffrage.

Who acted as secretary?—Citizen Skirving.

Had he any assistant?—Yes, I had that honour.

Did you frequently attend in that capacity?—I did, as often as I could.

Were there any minutes of the proceedings?—Yes, there was a scroll of minutes.

Should you know them again?—Yes, certainly.

You wrote part of it yourself?—Yes.

Was it not the practice in the British convention always on the subsequent day, to read over the minutes of what passed the day before?—It was the general practice, but was sometimes neglected.

Were there ever any observations or remarks made?—Corrections were frequently suggested at the time, and other corrections were delayed till the committee should meet to correct the whole

From what you know of those minutes, that you had occasion to take down yourself, do you think the account they gave was a fair and accurate account?—As far as my memory could serve me, though no doubt I may have made many mistakes.

Had you occasion to hear the minutes read over, of what passed when you were present?—Yes, frequently.

Did the panel at the bar frequently attend the meetings of the convention? was he constantly attending?—Whether he was constant or not I cannot say; I have seen him there.

Did he take an active part in the business?—He took an active, and a very public spirited part.

Did he act as preses or chairman?—I do not recollect his being called to the chair, I rather think he was not.

Do you recollect, on any of the nights that you attended the British convention, any proposal having been made for a union between the delegates of the two countries, England and Scotland?—Some such proposal I believe was made when I was absent, but I think I heard of it.

Did you come in during the evening when it was canvassed?—Yes, I did.

Did you hear any thing of a committee of union to be appointed?—I heard that there was such a thing proposed.

You were not in when the proposal was made?—I am not certain, but I rather think not.

Were you present when the panel made any speech?—I was present when he made several; and I was told he had made many when I was absent, which I regretted that I had not heard.

Do you remember that he made any upon this proposal of union?—I cannot charge my memory with it.

If you came in, in the course of the night, when the proposal was made, it is possible you may recollect?—I came in upon this occasion, while Mr. Gerrald was speaking.

If the speech, or a part of it, was read to you, you could possibly tell whether it was accurate or not?—I cannot say.

Take a glance over that paper, and tell us if you recollect it?—I think you had better show me the indictment: he certainly is not indicted upon the newspaper account. [looks it over.] I think I can say that I recollect nothing of it but these words, "The voice of the people may be wrong when their understandings are perverted by priestcraft, or darkened by political superstition, like the voice

* Yorke was not then dead; he was in 1795 tried at York for a conspiracy. See his case, *infrà*.

once heard in Jerusalem of crucify him, crucify him." The striking allusion that was made by the panel to that important transaction, makes me recollect it. As to any thing else that passed that evening I cannot recollect. I think I came in a little before this part of the speech.

Do you think that was the night on which the motion for a union was canvassed?—I cannot say.

Did you read the Gazetteer at that time?—Not when they were published; I had very little time.

Do you recollect after this, a motion being made in the convention, said to be a motion of Mr. Callender's, in the following words, or words of a similar import [reads Callender's motion from the indictment?]—I do not recollect whether I was present at that time or not; I know that such a motion was made by Mr. Callender.

Do you know if it was referred to a committee to make any amendments or alterations?—Yes.

Was there any report?—Mr. Callender was very much enraged that his motion was not adopted precisely in his own words.

By whom was the report given in?—I cannot say.

Look at that [Callender's motion in the minutes.]—That is my hand-writing.

That regards the motion we are now talking of?—Yes, it does.

Look at that [Mr. Sinclair's amendments,] it seems to have been in your possession, and marked in your hand-writing?—Yes.

Mr. *Solicitor General*.—That is one of the papers that was found in Sinclair's possession.

Witness.—It was handed to me as assistant secretary.

Mr. *Anstruther*.—Were you present when this amended resolution was discussed, and did you continue there during the evening?—I cannot say, I rather think not; for almost every evening I was obliged to go away upon the business of a respectable gentleman.

Do you recollect having been present at that convention, when there was any proposal to burn a motion?—I think I recollect it.

Whom was that motion made by?—Mr. Sinclair. I opposed it, because we had hitherto done every thing with openness and candor.

Do you recollect the nature of that motion that was proposed to be burut?—I think it related to the calling a convention of emergency.

Had you any idea of the reason why he made such a proposal?—Owing to some arbitrary stretches of power that had been threatened.

Do you remember a motion made by citizen Margarot, of the following import: "That a Secret Committee of Three, and the Secretary be appointed," &c. [Reads it from the indictment]? Was any resolution adopted for carrying that into execution? Was there a committee appointed?—I believe there was committee of three or four.

By what name was it called?—A Committee of Emergency.

In what cases was this committee to assemble the convention?—I believe one was in case any illegal attempt should be made to disperse the convention. Another occasion was in case of a foreign invasion; and I heard next day that another was, in case the Habeas Corpus act happens to be suspended, or the act for preventing wrongous imprisonment. In any of these cases the convention of emergency were to meet.

How was this convention of emergency to be assembled?—I know of no particular mode in which they were to be assembled.

Do you recollect what number they were to consist of?—There were just three, and the secretary appointed on this business.

You had no idea of the place where the convention were to meet?—No.

That was kept secret?—Yes.

And this to the best of your recollection, was the motion proposed to be burnt?—Yes.

You said the reason of proposing that measure, was, that some arbitrary stretches of power had been made?—No, they had not been made; they were only threatened.

Do you recollect how you generally designated each other in the convention?—We addressed each other in different modes, very often Sir, very often Mr. such a thing, frequently Citizen; and I recollect farther, that the person who introduced the word fellow-citizens among us, was a very respectable young nobleman, lord Daer; and he used it singly for a long time, like the man who walked near thirty years with an umbrella over his head, and nobody followed his example.

When you were divided into smaller parties, what were they called?—They were first called divisions, and then classes, afterwards the word sections was adopted as preferable.

Did you ever use the word sittings?—Yes; and I suppose you call this a sitting of the court of justiciary.

You had in your official capacity an opportunity of seeing papers given in; how were they dated?—Variously, according to the fancy of the writer.

Here is one dated from Liberty Court.—Very good;—but, my lord, what objection have you to the word Liberty Court? Is the very name of liberty become unpopular? And here is another dated Liberty Stairs. Now, my lord, we have a number of new titles, and new streets, both in Edinburgh and Leith. I have been in Merchant-street, where I believe no merchant ever lived, and where I am sure there is not a single merchant's shop; I have been in Quality-street, where not a person of quality resides; I have been in Princes-street, where a prince never walked; I have been in Queen-street, where her most gracious majesty never set her foot. Besides these, we

have St. George's-street, St. Andrew's-street, St. James's-square, St. Patrick-street,——

Lord Justice Clerk.—What is all this idle harangue to the purpose?—My lord, I must say, it is exceedingly improper (I beg pardon for saying it), to interrupt a man upon oath. It is surprising, that the words Liberty Court should be found fault with, when we have so many new streets named after saints, although the majority of their inhabitants, so far from being saints, are in reality of the fashionable religion, that is the French religion, as your lordship perhaps would call it, or in plain English, of no religion at all. It is certainly proper to give a court that had no name, the name of liberty; nothing seditious can be inferred from it, any more than any thing superstitious can be drawn from the streets named after the Roman Catholic saints.

Lord Justice Clerk.—You are not come here to give dissertations, either on one side or the other: you are to answer to facts, according to the best of your recollection, and according to the great oath you have taken, answer the facts that are asked of you.—My lord, I wish to pay all due respect to your lordship and this Court, but I consider myself as in the presence not only of your lordship, but also as in the presence of the King of kings and Lord of lords; and therefore, as bound by my oath, to say every thing that I can consistently with truth, to exculpate this panel, who I am sure is an innocent man.

Mr. *Solicitor General.*—Many things you have now said, will, in my opinion, tend to do more hurt than good to the panel.

Witness.—Of that, the gentlemen of the jury will judge.

Lord Justice Clerk.—Mr. Solicitor General, it is needless to put any more questions to this man.

Mr. *Solicitor General.*—I shall put no more, my lord.

[The witness was then ordered to withdraw.]

Lord Justice Clerk.—Put him out then! Put him out!

William Ross sworn.—Examined by Mr. *Burnett.*

What profession are you of?—A printer.

Were you clerk in the Gazetteer office?—Yes.

Who had the management of that paper?—Alexander Scott.

Were you a member of the meeting of the Friends of the People?—Yes.

Were you a member of the convention?—Yes.

And of the British convention?—Yes.

Did you act in any capacity in either of these meetings?—No.

Do you write short hand?—Yes.

Were you in the use of taking down the debates in the convention?—I took notes in the convention.

For what purpose did you take those notes?—For my own amusement.

Did you not take them for the purpose of publication in the paper?—I did publish an account of them in the Gazetteer.

Then you took those notes for the sake of publishing them?

Lord Justice Clerk.—Take his own words; he says he took them for his own amusement, and published them in the Gazetteer.

Mr. *Burnett*—I believe you have a brother in this town.—Yes.

Was he in the use of attending the British convention?—Yes.

Did he assist occasionally as secretary?—I cannot say whether he acted as secretary or not.

Did he assist in any shape?—I have seen seen him taking notes, and writing.

Did he take notes of the debates?—Yes.

When you published the debates in the Gazetteer, did you state them as accurately as you could?—I cannot say for the accuracy of them.

Did you intend to make them as accurate as you could?—I did.

Did you revise the proof sheets of the paper?—Sometimes I did; I had not always an opportunity.

Are you acquainted with Mr. Gerrald, the panel at the bar?—Yes.

Was he a member of the British convention?—I have seen him there.

Did he take a leading and active part in the business, as far as you saw?—I cannot say that I observed him take any leading part more than others.

Did he make speeches?—I have heard him speak in the convention.

So far as you recollect, did you take notes of his speech and publish them in the Gazetteer?—I published in the Gazetteer speeches of different persons, and I suppose Mr. Gerrald's among the rest.

Did you ever see Mr. Gerrald act as preses?—I cannot recollect.

Do you remember a motion made by Mr. Callender in the convention?—I think I do; but it is at such a distance of time that I cannot recollect much about it.

Do you remember any debate with regard to a question of union?—I think I do.

Do you remember if Mr. Gerrald made any speech upon that subject?—I remember his speaking; but what his speech was I cannot say.

Look at that newspaper; is that, to the best of your belief, the speech that you wrote out for the Gazetteer?—I cannot say.

This paper is published by you, is it not?—It appears to be so.

Lord *Dunsinnan.*—Was it an accurate account? Did you intend to make it inaccurate?—I did not intend it; but from circumstances I am sure it is not accurate.

Lord *Eskgrove.*—Did you intend to put any thing in that did not pass?—I had taken a

cold and did not hear well; and, not being practised in the short-hand-writing, I filled it up as I thought suited the occasion.

Mr. *Burnett.* — Do you remember any amendments being made upon that motion of Callender's!—I have some recollection of this motion of Callender's.

Was that motion passed as given in by him, or were there amendments? I will read it from your own paper [reads it]. Were you present when these observations were made by Mr. Sinclair?—I was.

And did you write that, as far as you recollect?—I think I wrote that part of the Gazetteer; but I cannot answer for the accuracy of it.

Mr. *Solicitor-General.*—Do you remember any thing about a convention of emergency being appointed to meet in certain cases?—Yes.

Tell us the cases in which they were to meet?—I recollect something of it, from having told it in this court before.

Was the suspension of the Habeas Corpus act one?—It was mentioned.

Was a suspension of the act for preventing wrongous imprisonment mentioned?—I believe it was.

Was an invasion mentioned?—I do not recollect hearing of that.

Was there any thing about landing foreign troops?—I think foreign troops were mentioned.

Was the passing an act similar to the Irish convention bill one?—Yes.

William Ross cross-examined by Mr. *Clerk.*

Had you access to know that Mr. Gerrald was much indisposed, during the meeting of the convention, and frequently absent from the meetings?—I suppose Mr. Gerrald's health was not in a very good state; ever since I first saw him I imagined he was not in a very good state of health.

I suppose you attended these meetings pretty regularly, by your taking down the debates in short-hand.—I was a good deal there.

Did you observe that Mr. Gerrald was frequently absent from those meetings?—It might be so.

Tell the jury again the circumstances on account of which you did not publish it as accurately as you wished.—I had not sufficient practice in short hand to write it accurately; and another thing was, I was just recovered from a fever, and had a severe cold that I could not hear well.

You mean to say, that what you published, is in substance the same that you heard in the convention, but that a good deal was filled up from supposition?—Yes, a great deal of it was; and I cannot now say what part of it was so filled up; I filled it up as I thought suited the nature of the question.

Did the convention authorize the publication of those debates in the Gazetteer—? They did not; the convention had no concern with them.

Do you know any instance in which it was moved that their proceedings should not be allowed to be published in the Gazetteer?—I heard a debate one evening; it was late when I came in, concerning taking the votes, and I thought it alluded to me.

Do you recollect any thing of a motion returning thanks to Mr. Scott for the publication of the Gazetteer?—To the best of my recollection I never heard such a motion.

Mr. *Gillies.*—Were you present upon the 4th of December, 1793, when the following motion was proposed:—"That the moment of any illegal dispersion of the present convention, shall be considered as a summons to the delegates to repair to the place of meeting, appointed for the convention of emergency, by the secret committee, and that the secret committee be instructed to proceed without delay to fix the place of meeting?"—I cannot recollect that I was, but I think I have heard of the motion.

Do you think, upon the 4th of December, that Mr. Gerrald was present? or do you remember his being ill at that time, and absent from the meeting on that account?—I cannot say; all that I recollect about Mr. Gerrald's absence is, that I always thought he was in a bad state of health, but when he was absent or present I cannot recollect.

One of the Jury.—I would ask you, in the first place, were the convention acquainted with your intention to publish their proceedings, previous to publication? and, in the next place, did they ever complain of its being inaccurate?—I dare say they knew nothing of it previous to publication.

Lord Justice Clerk.—But did any of them complain to you or Mr. Scott that they were inaccurately taken down?—I have already said, I came into the convention one evening, and there was a talk about the notes being taken, and the impropriety of it, and I thought they alluded to me.

Mr. *Solicitor-General.* — Did you, upon that, discontinue taking notes?—No.

You continued taking them till they were dispersed?—The day they were dispersed I was taken before the sheriff.

Lord *Abercrombie.*—Did any member, or did the convention, complain that you had not taken them accurately?—Yes; one member particularly spoke of my inaccuracy respecting the number of delegates from Sheffield, and a number of inaccuracies.

What were the others?—I cannot recollect.

What was the nature of the inaccuracies?—They were inaccuracies in words.

Mr. *Gillies.*—Did Mr. Sinclair ever complain of the general inaccuracy of taking down the debates?—I do not recollect any particular person.

George Ross sworn. — Examined by Mr. *Burnett*.

You were clerk in the Gazetteer office?—Yes.

You were a member of the British convention?—Yes.

Were you in the use of assisting the secretary? — Yes; I sometimes assisted the secretary, and so did several other persons.

Was your brother one?—No, never.

Is that your hand-writing?— [Reads.]—"Citizen Gerrald appointed chairman." Yes it is.

Did you ever hear him make speeches in the convention?—I have heard him speak in the convention.

Do you remember any debate about a union?—I recolleet something about a union of the societies of England and Scotland.

Do you remember Mr. Gerrald speaking upon that subject?—I do not recollect whether he did or not.

Do you remember a motion made by Mr. Callender about a convention bill?—Mr. Callender made a motion, that in case any motion was made in parliament to bring in a bill, such as the convention bill in Ireland, that the convention should meet and petition parliament to prevent it.

Was that motion referred to a committee?—I do not recollect.

What was done with it?—I do not recollect at present.

Do you remember Mr. Sinclair making any amendments upon it?—I believe there were amendments proposed.

By Mr. Sinclair?—I cannot recollect.

Were those amendments passed?—I believe they were; but I am not very certain.

Do you remember any thing about the amendments?—No, I do not.

Read that.—[Reads.]—"Citizen Sinclair read the amendments upon citizen Callender's motion,"—and then comes another person's hand-writing.

How much of that is your hand-writing?—The three last lines.

Do you recollect nothing at all about it?—I do not recollect the particulars of the motion.

Was there any thing in Mr. Sinclair's amendment about a convention of emergency?—I do not remember it.

Did any other body mention it?—I remember a convention of emergency being mentioned.

And when was it to meet?—In case of a bill being brought into parliament similar to that passed in Ireland.

In any other case were they to meet?—In case of Hessians and Hanoverians being landed in this country, they were to petition parliament.

In case of the suspension of the Habeas Corpus act?—I do not recollect.

Or of the act for preventing wrongous imprisonment?—I do not recollect.

Or in case of a foreign invasion?—I do not recollect.

Read that.—[Reads.]—"Citizen Gerrald, in a very energetic and animated address, expressed his happiness at the motion passed."

That is your hand-writing?—Yes.

Do you know the reason of that blank being left in the minutes?—I cannot tell that; but if you would have allowed the convention to sit and publish their minutes, it would have been filled up.

Lord Justice Clerk.— Remember you are upon your oath.—I know that very well; I come here to tell the truth. All I know about it is, it must either have been left to be put in at a future period, or, from hurry, or some reason, it could not be put in at that time.

Mr. *Burnett*.—Were the speeches, made in the convention, published in the Gazetteer?—Yes, what my brother took down.

Did you ever read them in the Gazetteer?—I have read them, but I have very little time to read.

Did there appear to you to be any thing stated in the Gazetteer that you did not hear in the convention?—If I had read them particularly over, I perhaps could have answered to that.

One of the Jury. — Who corrected the speeches for publication?—I believe my brother, at least I suppose so.

Did you ever correct them yourself?—I do not know whether I ever did or not; perhaps in reading over the proof I might.

Mr. *Burnett*.—Here is a paper with "vive la convention," and "ça ira, George Ross;" is that your hand-writing?—Yes.

George Ross cross-examined by Mr. *Gillies*.

Those words, "vive la convention," and "ça ira," were written by you at one of the sections?—Yes.

Was Mr. Gerrald ever present at this section?—No.

Did the convention authorize these expressions?—No, they never did. I believe Mr. Gerrald never belonged to any of the sections.

How came you to put these expressions?—There was no harm in that.

Was it a fancy of your own?—It was, without any orders, just a fancy of my own.

Was any thing of that kind stated in the minutes of the convention?—They were written by me before either the convention or the panel could know any thing of them.

Were they afterwards read over and approved of by the convention?—There were several members thought them very foolish.

Mr. *Solicitor General*.—But they were read over and lodged with the secretary as official papers?—Yes.

Mr. *Gillies*.—Were these expressions, "vive la convention" and "ça ira" read over to the convention, or only the report from the section?—It depended upon the person who read them.

agitation on that account, and recognized by the convention itself. Gentlemen, it may be necessary to point out to you in what way this was recognized by the convention, as giving a fair account of their proceedings. I see there appears in the minutes many resolutions about supporting the Gazetteer, as a paper of their party; and, in one of the minutes, a person of the name of Colin Nory having applied for a copy of the minutes, the answer returned to him is this, that it will be unnecessary, because they will find them in the Gazetteer. I say, then, you cannot have a doubt but that it contains as fair and accurate an account as you can expect; at least accurate enough for all the purposes for which I shall read them.

Now, gentlemen, having thus stated and given you some account of the evidence which I have to rely upon, I shall now proceed to consider the charge brought against this panel, and the evidence by which I say every part of it is most completely and without contradiction substantiated. The general amount of the charge comes to this, that in the months of November and December last, a set of seditious persons assembled in this city, and assumed to themselves the name of "the British Convention of the Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments." That such a meeting was held in this city is a fact too notorious and too well remembered by every one of us to admit of contradiction; that this panel was a constituent member of this meeting is equally clear and indisputable, having come here by delegation from one of the societies in London,—I believe the Corresponding Society; but it matters not which, —and that he attended and took an active part in the resolutions of those meetings will not be disputed by himself. I believe that he took an active part, and I must say, that from the talents which this gentleman has shown, and from the character given him by his counsel, I have no doubt that his abilities and education qualified him to take a very distinguished part in the convention, as one of the leaders and prime movers among them.

Gentlemen, I say, if nothing more had been proved against this panel than his taking an active part in the proceedings of a meeting of this kind, upon that I would maintain that he is guilty of sedition; because I say the meeting itself, from the very nature of it, and the part he took in it, is sufficient to constitute a charge of sedition against him. For what was this meeting? What is the name that they assume to themselves? They called themselves "the British Convention of the Delegates of the People;" plainly conveying an idea that they were the representatives of the great body of the people at large, and endeavouring to vest themselves with legal authority. I say this alone is seditious and contrary to law: the people of Great Britain are represented by their delegates in parliament; there their representation lies, and an attempt of any other body of men to call themselves the representatives of the people is seditious—is illegal. A convention, it is very true, is not a name so entirely new in Scotland as might have been imagined; a convention was a legal name in Scotland, given to a legal body, invested by the sovereign with parliamentary powers, in some degree, at least with powers very little short of those vested in the parliament. We know it was a convention of the delegates of the people in Scotland which accomplished the revolution. At that period, the people of Scotland alarmed at an indignant invasion of their rights, seeing their privileges in church and state invaded and threatened with the establishment of a despotic power; at that period,—that memorable period to which we all look back, at least in name, with reverence,—at that period, the people of Scotland, all that was great and good and wise in this country, assembled; at that time we needed not delegates from corresponding societies in London; there was then no occasion for inflammatory hand-bills and two-penny pamphlets; the people of Scotland know when their rights are invaded; at that time their constitution was attacked, and a despotic power threatened them; at that time a convention met of every thing great, respectable, and good; and they established the principles of the Claim of Rights, and provided against any encroachment upon that constitution, by such guards as appeared to them to be perfectly sufficient.

But, gentlemen, what is the object of this British convention of the delegates of the people? We are told it is to obtain universal suffrage. I say, gentlemen, that universal suffrage is not only contrary to, not only not authorized by the constitution of Great Britain, but a complete subversion of that form of government under which we live, and which was established at the time of the revolution. At that period our forefathers published to the world their ideas of government in the Claim of Rights; they declared openly and manfully what they thought sufficient to make them a free and a happy people, and to support the constitution. And, give me leave to say, and tell many of those people who talk so loudly of the Claim of Rights which they never read, that every right then stipulated for by our forefathers, every tittle of them is at this moment enjoyed by the poorest wretch that breathes in Scotland. If the gentleman can show me one single instance in which the Claim of Rights is invaded, I will this moment sit down and give up the argument.

But we are told that universal suffrage is a speculative opinion with respect to government; that wise men differ upon it, and that it is a part of the freedom which we enjoy to have the liberty of fairly discussing every political subject, and this among the rest.

Gentlemen, this is a proposition which I will take the liberty to deny. I will take the liberty to say, that the maintaining the freedom of discussion of political questions to that length which is subversive of the constitution is most illegal and most unconstitutional; for, what is the situation in which we all stand? We are not here in a state of nature, we are not savages, and now for the first time to choose a constitution for ourselves; not like a man shipwrecked upon a desert island, free to choose any mode of government we please. No; we are all of us born subjects of the British empire, subjects of Great Britain, which is the most inestimable blessing, and the most inestimable birth-right that can be bestowed upon us. From our birth we owe allegiance to the constitution established at the revolution; we are not to venture to say that another constitution would do better in its place. I say, by law we owe allegiance to it from our birth, and by law we are bound to prevent it being encroached upon, and that no body of men have a liberty to say we will indulge in speculation, and there is no harm in speculation. I say, that subjects of Great Britain, born under allegiance to the constitution, have no such liberty. Now, gentlemen, I ask, was universal suffrage any part of the constitution established at the revolution? Was it ever so much as thought of? Was it ever so much as mentioned among those rights which our ancestors have established? Not a word. The patriots of those days to whom we are so much indebted, had too much good sense not to see that any scheme of that kind was inconsistent with that species of government, composed of monarchy, aristocracy, and democracy, which was then established; they saw that any scheme of that kind would be inconsistent with it, and that it would be dangerous and chimerical: but what their good sense led them to see and to shun we are able to judge of upon much surer grounds. This topic is no longer a matter of theory, in which men will indulge, as they please, their different opinions; it is a matter which has been brought to the test of experience, in the only case in which it has been tried since the world began (for the (Anglo-Saxon government knew of no such thing): one experiment has been tried, in the government of France, and the result of that experiment I shall not mention; it is a subject from which I turn aside with horror and detestation, and yet this is the time, after this experiment has been tried, after it has produced those horrible mischiefs in a neighbouring country, which we cannot think of without shuddering, this is the very time when this British convention will lift up their own mad opinions against the experience of ages; when they say in spite of the revolution, in spite of their principles then established, and in spite of what has happened in France, we will obtain this universal suffrage, which, if obtained in any country in the world, would just produce the same consequences, or nearly the same that it has done in that unhappy ill-fated country which I just now alluded to.

Gentlemen, I shall only suppose, that in place of associating themselves for the purpose of obtaining universal suffrage, as they tell us, suppose they had entitled themselves an association, in order to obtain a demolition of kingly power and of nobility; to be sure they might have told us it was mere matter of speculation;—that many good men had thought we were much better without kings and without nobles; but I am sure, living in this country, and under the constitution of Great Britain, any proposition of that kind maintained by any body of men, would be illegal and seditious.

Gentlemen, having shown you that the object of this association was illegal, let us now consider the means which they took to accomplish their object, which include the different acts of sedition charged against this panel, because every one and all of those steps which they took, towards obtaining this favourite object, are gross and aggravated instances of sedition.

Gentlemen, the title which this meeting assumed to itself, I have already spoke of; and which was, I apprehend, in itself illegal, as calling themselves the delegates of the people, that is to say, the delegates of the people at large.

But the libel farther states, "and did in the whole form and manner of their procedure, as well as in the principles they avowed and propagated, clearly and unequivocally demonstrate, that their purposes were of the most dangerous and destructive tendency, hostile to the peace and happiness, and tending to subvert the constitution of this realm, imitating in the form and tenor of their proceedings, the convention of France, the public and avowed enemies of this country, and with whom Great Britain then was, and still is at war, the members calling each other at their meetings by the name of citizen, dividing themselves into sections, receiving reports from said sections," and so on. Gentlemen, for evidence of this, besides the testimony of the witnesses that was delivered in your presence, I only refer you to the minutes of the convention, which will be lying before you when you deliberate upon this subject. Turn to every page, and you will see there is no part of it the language of Great Britain, but all of it this new-fangled jargon which has been accompanied with so much confusion. We find committees of finance, of organization, primary assemblies, and so on. You will find, by looking at the minutes, or these reports of sections found in the possession of Skirving, the most complete evidence of this; and I believe there is not a single phrase of mischief, consecrated to every thing that is bad in France, but has been adopted by the members of the British convention.

Gentlemen, it is very true, that this mode of imitation is not, by the law of Scotland, a crime in itself, nor do I charge it as such; it is only mentioned in the libel as a circumstance of evidence, in order to show to the jury the general views and intentions of the parties. There is nothing wrong in the word convention, there is nothing wrong in organization, or in liberty and equality; there is nothing wrong in these words, nor any other in the whole English dictionary; it is the improper association of them, which I apprehend here go to mark the dark and dangerous designs, which these people have not been able to conceal. Prudence might have told them, that whatever alterations they meant to make in this country, they should not have borrowed these expressions of France; but the fury of reformation was so mad, and so rapidly did the torrent run, that they were always speaking out the beloved object they had in view; and thus we have committees of finance, of instruction, of organization, and all the rest.

Gentlemen, you were told the other day, by a very ingenious counsel on the part of Mr. Gerrald, that this imitation of French manners, was by no means new in this country; that something of the same kind had taken place before, and nobody ever found fault with it. It is true, we may all remember when all the fopperies of the fashions of France were our objects of imitation; but did they endanger the constitution of this country? Was it ever pretended that they were to give laws to Britain, and alter her constitution? Did the taylors, the milliners, or the frizeurs ever pretend to legislate for this country? Did they ever pretend any thing but to make our coats or powder our heads? That species of imitation may be ridiculous, as it certainly was; but it was perfectly innocent; it had not the smallest resemblance to that of which these gentlemen have been guilty; it no more resembles it, than if a man should choose to please himself with the diverting tricks of a monkey; this might be innocent, but it does not follow that in society he would be allowed to imitate the savage ferocity of a tyger; the one may be ridiculous, but the other is detestable and dangerous: it is on that account, and not because it was an imitation of French manners, that it is charged as pointing out the mischievous views and intentions which actuated the minds of these people.

Gentlemen, the libel next proceeds to state several speeches made by this panel, who, by all accounts, appeared to have a talent for public speaking, of which you in all probability will soon have a specimen; and he certainly has a talent for composition; of that we can all judge. It is stated, that on the 21st of November, he made the speech which is engrossed at length in the libel, and which has been read before you this day. Gentlemen, the evidence that he made the speech, does not rest solely on the testimony of the Gazetteer, although even that I should have thought sufficient evidence to establish the general import and substance of the speech; because, I will read to you an abridgment of that speech, taken from an authority which the gentlemen will not pretend to question, I mean the minutes of the convention, which is just as bad, or rather worse if any thing, than that published in the Gazetteer: [reads from the minutes] "Mr. Gerrald observed, that whatever difference of opinion might exist within those walls, we can never forget that our friends and our enemies are in common, and that our object is equally the same;—he took a view of the means we should take to gain our object—entered fully into our right to annual parliaments—minutely investigated the principles of government—asserted that the end of all government is the good of the governed," which is certainly very true—"that if money is taken out of our pockets, it signifies not whether it is taken by the robber on the heath, or the monarch on the throne—made many remarks on the revolution-settlement, and the benefits derived from the revolution, but clearly demonstrated that they are now totally taken away," which agrees with the words in the Gazetteer, "that the present form of government no more resembles the revolution, than a dead putrid carcase does a living body." Now, if you compare these together, you will find, that this short account is a most faithful and accurate abridgment of Mr. Gerrald's speech, as stated in the Gazetteer, which I shall not trouble you with reading again—there are just two single passages I beg leave to call your attention to: "It was justly observed by citizen Callender, that, soon after the union of the crowns of England and Scotland, the people of both countries were deprived of some of their most valuable privileges. It was from that period, that the greatest encroachments began to be made upon public liberty, but, if that union has operated to rob us of our rights, let it be the object of the present one to regain them. If the event exists for our shame, as it has existed for our chastisement, let it also exist for our instruction."

Now, gentlemen, I here say, that that is a most abominable libel upon the union of the two kingdoms, one of the most auspicious events that ever happened; to say, that "from that period, the greatest encroachments began to be made upon public liberty," is an assertion that is most false and seditious; for since that period, there have been no encroachments upon public liberty, and no individual citizen has been deprived of any of his most valuable privileges.

Gentlemen, the only other passage that I shall take notice of in this speech is this: "It has been observed, that the revolution of 1688, did not produce the advantages which might have been expected from such an event.

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legislature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our own and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country; and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people, and annual election, until compelled to desist by superior force.

"And we do resolve,

"That the first notice given for the introduction of a convention bill, or any bill of a similar tendency to that passed in Ireland, in the last session of their parliament;

"Or any bill for the suspension of the Habeas Corpus act, or the act for *wrongous imprisonment, and against undue delays in trials in North Britain*;

"Or in the case of an invasion;

"Or the admission of any foreign troops whatsoever into Great Britain or Ireland; all, or any one of these calamitous circumstances, shall be a signal to the different delegates to repair to such place as the secret committee of this convention shall appoint; and the first seven members shall have power to declare the sittings permanent; and twenty-one shall constitute a convention, and proceed to business.

"The convention doth therefore resolve, That each delegate, immediately on his return home, do convene his constituents, and explain to them the necessity of electing a delegate, or delegates, and of establishing a fund without delay, against any of these emergencies, for his or their expense; and that they do instruct the said delegate or delegates, to hold themselves ready to depart at one hour's warning." This is the resolution which, even the audacity of the convention dares not insert in the minutes; and I am not surprised at it,—a more daring insult to the established government of the country never existed. Gentlemen, upon the first part of it, an attempt, or something like one, was made by the counsel to quibble away the import of it, that they would pay no regard to any act of the legislature; that is, that as soon as such a bill was brought in, they would meet, and endeavour to prevent it from passing; but if you attend, you will see this could not be the meaning of it; it is as plain as words can make it, a resolution upon the part of these gentlemen, to bid defiance to the legislature of Great Britain.—That we who know better than you, will oppose force to force, and instead of paying regard to it, will make it a signal for us to hold a convention of emergency, to be held at a place unknown to the parties themselves, to be fixed by a secret committee, and that each of the delegates shall be entrusted with a sealed letter containing the name of the place of meeting.

This is one occasion of the meeting of the convention of emergency, but it is not the only one; there is another which well deserves your serious consideration; one of the cases specified in which this convention were to meet, in a place unknown to any but a chosen few of their own number, is in case of an invasion. Gentlemen, this is not entirely a fancied case; we all know that an invasion of this country has been projected, was then, and is yet in agitation (when it will be attempted God only knows) by its most inveterate foes, not as in former times proceeding from a rivalship in arms—a contest of ambition—no, the object of the invasion as declared by themselves, is no less than to annihilate the government of Great Britain; to cut it up as a monstrous piece of tyranny, to destroy that favourite of liberty and of wisdom that was reared by our ancestors, and which has so long been the glory and pride of every Briton and the admiration of mankind; and which, for that reason, has been so long the envy of our foes. This constitution, in the preservation of which is involved every privilege, every public right, and I will add to it every domestic comfort, is by this invasion to be swept away at once; a calamity which, if it should happen (which I trust it never will, but no thanks to those gentlemen) than compared with which, what is there in the history of man to equal it? Of all the calamities, of all the punishments that ever were inflicted upon a nation, if the whole vials of divine vengeance were to be exhausted upon any people, or all the calamities that can proceed from the convulsions of nature, or pestilence, or still more desolating famine; I say the whole of these calamities compared with a successful French invasion, I might for my own part, consider as visitations of kindness and compassion; and yet this is one of the cases which their resolution provides for. This is the crisis, this is the moment which, if ever it should occur, and it may God knows how soon, when the power of Britain must be exerted. Let me suppose the event, that the French assembled near our coasts; suppose them (which God forbid) either to vanquish Britain or defeat her vigilance and arrive, and prepare to land;—in that awful moment, when the armies of Britain, I trust, under their sovereign shall muster upon the coast to repel the foe, shall carry with them the wishes of every good citizen, every thing that is wise and good in the country giving every assistance in their power; in that dreadful hour where are we to find the British convention? Do we find them assembling under the banners of our constitution? No, they tell us, that it is their resolution, that they have de-

clared before God and the world, that in that hour they will, conspirator-like, slink into a corner, shun their fellow citizens, form a body of their own, and meet in a place which they themselves know not, and is only to be unfolded by the opening of a sealed letter when the hour arrives.

Gentlemen, though the mind of man can only be viewed by that All-seeing Eye which can pierce into it, yet a human tribunal can judge of intentions from actions; and taking the actions of those men, as proved by the most authentic documents, they were dark, they were dangerous.

Gentlemen, it has been said that it might be their intention to unite themselves to repel a foreign—to repel an invasion. Had that been their intention, would they have chosen to secrete themselves from the rest of their countrymen? Were they so mad (and mad I admit they were in many things) as to think that a hundred men, or whatever their number was, were sufficient to repel an invasion? No; to a foreign foe, such a force as theirs must appear contemptible. It is true, they were formidable, not by their numbers, not by their arms, but they were formidable by being an enemy within our own bosoms. This, this alone made them formidable. As to its being their intention to repel the invasion, it is too eccentric, I am sure, to gain credit from any man.

Gentlemen, what mighty motives had this convention to stand forth to repel this host coming against us? Suppose the period arrived, they behold the power of Britain assembled under its lawful sovereign; there they see a king, a government which they consider as no better than a dead carcase; there they see an aristocracy which is hateful to them. Do they see universal suffrage? No; it is that which can never be allowed by the constitution of Britain. But what is the case? They meet in a dark place. What do they meet for? To obtain universal suffrage. What do the invaders offer them? Universal suffrage;—you shall have it from the pure fountain head, from the source of every thing that is wise of political instructions, from the fountain head, the convention of Paris. You shall have no aristocracy;—you shall have no religion, if you please; but of that I say nothing;—you shall have primary assemblies;—you shall have every one of these things which you appear to be so remarkably fond of. Gentlemen, it is unnecessary for me to carry the matter so far as to suppose that this panel, or the other members came to the dark, the desperate, the wicked resolution of joining the foes of Britain, in case of an invasion; it is by no means necessary. But supposing they meant to go no farther than what they declared,—to meet in a secret place, unknown to the government of this country, perhaps to negociate with a foreign enemy; in either way their intention was dark, it was wicked, it was criminal. Gentlemen, with regard to many of the members, I do in charity believe, that they concurred in this resolution, not seeing the precipice on which they stood, unconscious of the end to which it tended. But I am sorry to say that is an apology that will not do for Mr. Gerrald; he is a man who supports this resolution, and follows it up by an inflammatory speech; it is impossible that he could be ignorant of the point to which it led; it is impossible he could be innocent, he must be more or less criminal, and the smallest criminality that can be ascribed is very great indeed, far more than sufficient to support the charge of sedition which I have made against him.

Now, gentlemen, the next thing is the speech of which the minutes very shortly say, "Citizen Gerrald, in a very energetic and animated address, expressed his happiness at the motion passed." Gentlemen, I shall only read one or two expressions in it, and you will attend to the occasion upon which this speech was made; it was made just after the convention had passed this solemn resolution and declaration before God and the world. In this state, when their minds were in this situation, in a state of avowed hostility, Mr. Gerrald rose up and made a speech, adding fuel to the flame; he says, "Though I could not get a copy of this bill, the heads which I have read are sufficiently explanatory of its detestable principles; and I hope the measures which have passed this night will convince the minister, that we are determined to guard against every attempt that may be made to deprive us of our rights. And though by some it may be thought a bold, by some a daring measure, yet it will be found the best for the securing the peace of our country; for if such a law were suffered to pass, if men were not allowed to utter their complaints, a number of fierce and rancorous passions would arise, and we would seek to appeal to that last terrible decision, the event of which is uncertain, but which God and nature allows.

"If the servility of the people had been less; if they had dared to meet, and, in place of murmuring, to have told their rulers that there was danger in seeking to deprive them of their liberties, we would not have had to adopt this resolution to night; but when I saw the calm deliberate countenances of all present, and the solemn manner in which it was passed, I was convinced that it would not only be a resolution of words, but a rule of action."

Gentlemen, upon the reading of this speech, you will consider that it was addressed to a number of persons who had, a few minutes before, come to the resolution of flying in the face of the legislature, which is so plain that I shall say no more about it.

Gentlemen, I have now gone through the charges in the indictment, and I think I have established every one of them in such a way as must have given you satisfaction.

The only part of the charge that remains is, that at the time the magistrates came to disperse them, even after that, Mr. Gerrald again takes the chair, and would not leave it till he was turned out; they declaring that the dispersion was of no consequence, for they had declared themselves permanent. Upon that it is unnecessary to say any thing, because you heard the evidence that was given upon it; and you will give it such attention as you think proper.

Thus I have endeavoured to lay before you what appeared to me to be the most material parts of the charge against this gentleman, substantiated by that evidence which appears to me so satisfactory. And as the panel has produced no evidence, it is impossible for me to see what defence he may make: I shall only say, in general, that if he disputes the fact, I refer you to the evidence now lying upon the table. If he says that the facts, supposing they are true, are not criminal, I appeal to your own common sense, I appeal to your own judgments, to the judgments of every court of law who have ever decided in criminal cases. If he should say, notwithstanding all (for his counsel insinuated something of the kind), that he acted from the purest intentions, and that his intentions were innocent, I must tell you, that with regard to the absolute purity of his intention, it is impossible for human penetration to see; that must be reserved in every case to the last day, when every truth must come out; but you, as well as every other tribunal, must judge according to the evidence and according to the facts as they lie before you; and from those facts I think I have satisfied you, that their intentions were seditious, wicked, and criminal. I shall trouble you no farther upon this case, but leave it to your decision. I have stated the grounds upon which I think myself entitled to demand a verdict of guilty.

Mr. *Gerrald*.—Gentlemen of the jury; Mr. Solicitor-General has told you, with great truth and solemnity, that the cause of which you are at present the judges, is one of the most important which ever came before man for the purpose of determination.

Gentlemen, if at an early period of my life it had been announced to me, that the task of defending the rights and privileges of nine millions of people would have devolved upon me, a simple individual, I should certainly, from my youth up, have devoted my whole time, with unremitting application, that I might be enabled to execute so sacred and important a trust. Unfortunately, though a considerable period has intervened between the time of my being served with an indictment and my trial, yet I have been, in a great measure, distracted by various avocations, and my health much impaired by continual sickness. From my duty, however, no earthly consideration shall induce me to shrink. I, this day, come forward to advocate a cause, than which the sun never shone upon one of more deep and general concernment; and, impressed with this awful consideration, I advance to it with a tremor that shakes every fibre of my frame. But whatever be the result of this day's deliberation, I shall always look back to the part which I have taken, with the consciousness of a man who has endeavoured well; for, however weak the flesh may be, the spirit is strongly inclined to the service.

Gentlemen, the state prosecutions which agitated and disgraced the middle of the last century, were by no means of the same importance with those of the present day.

The contest between John Hampden and the crown rested solely upon this question; whether the crown or the parliament should have the power of raising the supplies;* but it was always allowed, that the object of these supplies was the advancement of the general happiness. The cause which you are called to decide upon is not merely a matter of pecuniary consideration; you are called upon to decide whether man, who is by his nature social and rational, shall meet in society for the purpose of improving his faculties, and exercising those powers of reason which the common Father of us all has given us, to enlighten our understandings and ennoble our hearts; or whether, by relinquishing every thing that is virtuous, every thing that is praiseworthy, every thing that is valuable in the condition of our humanity, we shall be reduced to a situation beneath the beasts that perish.

Gentlemen, as an Englishman, I will not say a stranger in this country,—for, from being members of the same community, we have the same friends and the same foes; and the articles of the Union, I believe, say, that the natives of both countries are entitled to the same privileges,—yet, as an Englishman, I cannot but consider my situation as varying in some measure from that of a native of this country. In England, had I committed the supposed crime charged against me, the process would have been very different. The present legal process too much resembles those instituted in the last century, when prosecutions upon prosecutions were instituted for the purpose of destroying the freedom of our country: I say, the proceedings of the High Court of Justiciary too much resemble the proceedings of the Star-chamber before it was abolished. We have not in this country the advantage which we have in England of the bills being originally found by a grand jury. We have not afterwards the privilege of a petty jury selected entirely by the sheriff; but I understand that the assize is first appointed by the public prosecutor, from which fifteen are afterwards selected by the Court.†

* See the case of ship-money, Vol. 3, p. 825, of this Collection.

† See Vol. 19, p. 11. *note*.

This circumstance did not, however, deter me (though it was frequently urged amongst other arguments) from coming down here to take my trial. No; when the scourges of the late prosecutions, and the melancholy fate of the prosecuted were held over my head, I was not to be deterred from doing my duty; though by many I was considered as devoted a victim as Regulus departing into voluntary exile, or like Curtius plunging into the gulph for the salvation of his country.

Gentlemen, informations began in England during the reign of one of our worst princes, Henry VII. who filled his private coffers by the plunder of his subjects. In conformity to this process, I am sorry to acquaint you, that I was brought before the sheriff of this county by the operation, not by the regular service, of a warrant. When I was taken up I asked for the warrant, but it was refused. My temper, I trust, is mild and peaceful; though in England, had a similar process taken place, the officer might have paid for his irregular conduct with the forfeiture of his life. But that was not my purpose; for as truth is my only object, so reason is my only weapon. My papers were taken out of my bureau and carried before the sheriff. Knowing that those papers could contain nothing to criminate me, I claimed them as my property, and signed the claim without any hesitation. I am shocked, however, to think that so gross a proceeding should take place in any country as a disclosure of secrets by taking private papers. Since the original seizure of my papers, a private letter has been arrested in its passage to me from London, and in an attempt to see the contents, has been destroyed without its ever reaching me. I demanded what could be the object of this procedure. I was informed that it was for the purpose of collecting evidence against me. This collection of evidence then, it seems, may be made with impunity in Scotland, by as gross a violation of the laws of the land, as certain other collections are made, of which the collectors, when taken, are afterwards hanged.

Gentlemen, the solicitor-general acknowledged with much candour, that if he could not prove the criminal intention, he could prove nothing. It is upon this grand principle that I rest my defence: it is neither upon legal chicanery nor legal quibbles; these would be unworthy of the cause in which I am engaged. If the criminality of the intention alone can constitute the offence, either in a legal or moral point of view, I trust I shall be able to make out so clear a case, notwithstanding the calumnies which the lying breath of rumour may have cast upon me, that you yourselves, discarding prejudices which it is possible you may have imbibed, will retire from this court as fully satisfied of my innocence as I am myself.

Gentlemen, if fugitation is in the eye of law deemed a presumption of guilt, appearance, by parity of reason, must be deemed a presumption of innocence. Notwithstanding the pressing solicitations and strong inducements held out to me by the society who delegated me, and who would have paid my bail, I determined to come down and appear before you. Can there then exist a stronger proof of the consciousness of the purity of my own intentions, than my having voluntarily appeared before that tribunal which I might have shunned, and from which innocence itself has often fled?

Gentlemen, though it does not come immediately before you, I do conceive that my being brought to trial at this particular time is a harsh and rigorous measure; and it is rather remarkable that on the last Monday, a period which was marked for the first day of my trial, and when I appeared here before the court, our representatives in parliament were in fact sitting in judgment upon these very judges; nor do I think it would have degraded the dignity of their functions, if they had acted with less heat and with more deliberation, and had patiently waited till the result of the proceedings of the high court of parliament had been known upon their conduct.

Gentlemen, the history of Britain furnishes us with abundant instances of the interference of the legislature to correct judicial errors. In the case of Hampden, which was a period that must be dear and valuable to every Englishman, the parliament, by their interference, prevented the robbery of the subject by the arbitrary fiat of the crown. It is not fit, I own, that they should interfere where the public is not deeply interested; but where it is, they are bound to do so in justice to their representatives, and they always have done so. Nay, they have gone farther, and where the necessity was great, they have even come to a resolution in point of law, contrary to the judgment of a court of law, and to the opinion of ten out of twelve judges. In case the judges violated the law (a circumstance which in the late cases is yet to be determined), or where they suspected any undue influence, either in the exertion or the support of the prerogative, by officers of the crown, or by judges, they have always interposed. Is it possible to forget or to controvert either their conduct, or the propriety of it, in the great case of ship-money, which was first brought into question by Mr. Hampden, a private gentleman, who, so far from regarding the trumpery, petty-fogging consideration of damages, declared, that he would not pay it were it but one farthing, if pretended to be demanded of right, and by colour of law; and yet proceeded, according to my lord Clarendon's own account, with great temper and moderation in that suit. His lordship adds, "and all the world knows that never any cause had been debated and argued more solemnly before the judges, who, after long deliberation among them-

selves, and being attended with the records which had been cited on both sides, delivered each man his opinion and judgment publicly in court, and so largely, that but two judges argued in a day." Ten of them solemnly pronounced their opinion for the right claimed by the crown, and which it had regularly exercised for four years immediately preceding: but, as lord Clarendon observes (lord Clarendon was a monarchical man, much attached to Charles 1st.), " the judgment proved of more credit and advantage to the gentleman condemned than to the king's service; however," adds he, " these errors in government were not to be imputed to the court at that time, but to the spirit and over activity of the lawyers of the privy-council, who should more carefully have preserved their profession and its professors from being profaned by those services which have rendered both so obnoxious to reproach."

Gentlemen, this circumstance, I apprehend, is an object very important for your consideration, and which, I trust, will have some influence in the guidance and direction of your verdict; inasmuch as you find that in England, in a case where ten out of twelve of the judges gave their opinions against the defendant, yet, still their sentence was reversed at a higher tribunal, that of parliament. The sentence was reversed, and even Clarendon, a monarchical man, who comes down to us under great purity of character, tells you, " that these prosecutions were instituted and carried on by the crown lawyers, who were over active in the execution of their duty, and had subjected them and the profession as obnoxious to reproach."

Gentlemen, the indictment contains against me four charges. I shall endeavour briefly (in order that I may take up as little of your time as possible) to state these charges specifically, and to give as specific answers to those charges, as the combined operation of my understanding, and my conscience direct me to give.

The first charge is of so extraordinary a nature, that it was some time before I could bring myself to sit down to a serious refutation of it; and upon any occasion not so important as the present, I should either have combated it with the weapon of ridicule (of which, even, it is hardly deserving), or have thrown it behind me with silent contempt. I have been charged with making use of French terms, though it has been proved, as I shall presently show, that this charge, ridiculous as it is, is also fallacious.

Gentlemen, it is a most extraordinary thing, that such a charge should be made in a country, against a native of that part of the kingdom, I speak not of Scotland, but of England, where all our old law-proceedings are in that very language. The writings of the venerable Littleton, whose Tenures contain the whole doctrine of our law of landed property, upon which my lord Coke, the great oracle of English law, has written his Commentaries, are in the French language.

Britton, and other writers of as great authority, though of more remote antiquity, and who are deemed the legal patriarchs (as it were) in the history of jurisprudence, wrote in French; and the king himself, even at this period, never gives his assent or refusal, to any act of parliament which binds the subject, without expressing himself in the language of that country.

Gentlemen, I say not this for the purpose of vindicating myself from these charges, for it has been proved to you, clearly, from the evidence of Ross, that these French terms were of his own insertion. But I cannot help thinking that a spirit of malevolence dictated that part of the charge, and that these invidious insertions were made for the purpose of infusing into your minds an idea that I wished to co-operate with France, with whom we are now at war: and I am the more authorized to state this, as the first indictment, with which I was served, was totally devoid of these charges, and they have only been introduced in the second. But these terms were the pepper and salt to season the dish, for the gratification of the palate of the crown lawyers, and I, it seems, was to be offered up, like another Theyestes, as a victim for the banquet.

Gentlemen, the next charge against me is, that of having used the word citizen. It was said upon a former occasion by the solicitor general, that the use of the term was in itself innocent, and in many circumstances might undoubtedly be proper; but here again, he made a distinction. If a man, in the year 1745 (said he) had walked the streets with a white cockade, it would have been highly criminal; but now the action would be perfectly harmless, because there is no party existing amongst us, of an attachment to whom it might be interpreted as an emblem.

But, gentlemen, I hope your understandings will not be perverted by language of this kind, as you must see a most material and essential difference, between marching up the street with a white cockade, and using the term citizen. The using of this term, though it may by some be deemed ridiculous, can, by none, be judged criminal. The word citizen is a term of peace, and denotes that relationship in which we stand to each other, as members of the same community, for the performance of our civil duties; whereas the wearing of a cockade is the emblem of a military occupation, and in the year 1745, was a particular and avowed emblem of hostility to the government of the country.

Gentlemen, the next part of the charge is, that these meetings were illegal and seditious. Now their illegality, I apprehend, must depend either upon one or other of these three principles; either on the name Convention which we took, the principles which that convention intended to establish, or the man-

ner in which they conducted themselves after they met. Take away these three things, and no charge remains, consequently no ground of criminality.

With regard to the first, our assumption of the name of Convention, I am sure your own understandings will inform you, and it is a position to which the crown lawyers have assented, that to take a particular name does not constitute a crime. Many respectable gentlemen, in point of fortune and talents, met in a convention, expressly so called, for a reform in the Scottish boroughs, in Edinburgh; and though their views were different from ours, still it shows, that the bare assumption of that name, does not constitute an offence in the eye of the law. Our crime must then depend, either upon the principles which the British convention intended to establish, or the manner in which they conducted themselves when met.

Gentlemen, in a cause so sacred as the present, I would scorn to tell a lie to save my life. I boldly avow, and I hope the reasons on which I shall defend the principles, will be equal to the confidence with which I make the assertion, that our object was, to procure, by peaceful means, annual parliaments and universal suffrage; and, in so doing, notwithstanding all the declamation that has been urged against it, I shall endeavour to convince you that the establishment of these principles is not only conformable to every maxim of sound government, but congenial to the spirit of the British constitution itself. In order, gentlemen, to ascertain the first point, that universal suffrage (persons incapacitated by crimes and insanity excepted) is in fact consonant to the first principles of all good government, it will be necessary that we take some short review of the fundamental principles of society itself. The great object of the social institution, the great object for which men form themselves into society is, I apprehend, the safe enjoyment of their lives and property. If, then, in the earliest stages of society, every man possessed a right to the preservation of his life, and also to the peaceable enjoyment of his property, it follows of course, that the mode of government, which is best calculated for the attainment of those ends for which government itself was instituted, must be precisely that very mode of government, which all reasonable beings would wish to see universally adopted amongst men. Now, as every man claims from nature a right of judging for himself, on the best manner of promoting his own interest, and as no individual is born with any distinguishing mark of pre-eminence over his fellow-men, or with any character of exemption from the ordinary frailties of human nature, so every act of authority exercised by one man over another, or by a legislature over the collective body of the people, unless it be exercised by the consent of the individual, or of the collective body of the people governed, must be an act of tyranny. The right of the exercise of the understanding, is the noblest privilege of our nature, and indeed is inseparable from our condition as moral agents; moral agency, in fact, being nothing else, but the being guided by the dictates of our own understandings and consciences, in preference to those of another. And if, after the enactment of positive law, we submit to its authority, from which our private judgment may have revolted, it is only because a greater number of reasonable persons consenting to the law, than of those dissenting from it, carries with it the strongest presumption, that the passing such law has been the result of a greater portion of reason, than its rejection would have been—that it is founded in justice and truth, and therefore more conducive to the great ends of society, inasmuch as it has received the authoritative stamp of the approbation of the greater number of its members, who, in all well regulated communities, being equally entitled to a participation of its benefits, must of course be equally interested in promoting its welfare.

It is not true, that when men agree to erect a government, they give up any portion of their rights. No; they only adopt a different mode of enjoying them. They give up nothing; but by combining their own particular force with the force of others, they adopt a plan, by which they are enabled to possess their rights in greater security. All just government, therefore, being only a delegation, it cannot be armed with more power than it derives from the consent of them over whom it is exercised. Now, as prior to the establishment of government, no man had a right to take from another any property without his consent, and as all just authority exercised by any government must be derived from the people, so the government (which is, in other words, a national association for general good) cannot of right exercise any power, which one individual, before government was established, was not authorized to exercise over another. Hooker, to whom queen Elizabeth always applied the just epithets of learned and judicious, asserts, that the principle which I have just stated, is the only solid foundation of all legislative authority. Laws they are not, says he, which public approbation hath not made so.—Hooker's *Eccles. Pol.* lib. 1, sect. 10. And Mr. Locke expressly says, that "as government cannot be supported without great charge (a truth which we, God knows! feel every day to our cost), so it is fit that every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent, *i. e.* the consent of the majority, giving it either by themselves, or their representatives chosen by them. For if any one shall claim a power to lay and levy taxes on the people, by his own authority, and without such consent of the people, he thereby invades the fundamental

law of property, and subverts the end of government. For what property have I in that which another may, by right, take when he pleases to himself?" Here then, gentlemen, is the doctrine of universal suffrage expressly laid down. For as no man, in a state of society, can be altogether without property, either inherited or acquired by his daily labour, and as every man in the country pays a tax to government, either directly to the tax-gatherer, or indirectly through the commodities which he consumes, which all taxes ultimately affect, so it appears to me clear as the light of heaven, that every man of adult years, not incapacitated by crimes or insanity, has a right to a vote; otherwise he may exclaim, in the language of Mr. Locke, "what property have I in that which another may by right take when he pleases to himself?" That government, then, gentlemen, which is not a government of consent, must of necessity, be a government of usurpation.—After all, there are but three modes (except a man allows himself to be a public mendicant) in which money passes from man to man; by force, by fraud, or consent. The first, it will not be contended, except by conquerors or highwaymen, can ever establish a just ground of possession. By the operation of the second principle, I am afraid, it does pass, whenever a man pays a tax in a government in which he is not represented. During the American war, lord Camden, the first law authority in England, and now president of the council, repeatedly asserted, that "taxation and representation were inseparable." Now, if his lordship meant any thing by the word representation, he certainly must have meant adequate representation, for no other deserves the name, or answers the end; which adequate representation is well explained by sir Thomas Smith, a writer of great note and authority, in his Commonwealth of England, p. 37. "Every Englishman," says he, "is intended to be present in parliament, either in person, or by procuration and attorney, of whatever pre-eminence, state, dignity, or quality soever he be, from the prince, to the lowest person in England. And the consent of the parliament is taken to be every man's consent." Here is the doctrine of universal suffrage, laid down in words as strong as the English language can afford. It was then to repair these ravages, which time, whom my lord Bacon terms the greatest innovator, had occasioned, that the British convention sat; it was not to deform our constitution, but to restore it; it was not to promote, but to prevent its destruction, that we assembled. Besides, gentlemen, if the principle which Mr. Locke again states (see book on Government, p. 236.) be just, "that the preservation of property being the great end for which men enters into society," it necessarily supposes and requires, that the people should have property, without which they must be supposed to lose that by entering into society, which was the end for which they entered into it; too gross an absurdity for any man to own. Men, therefore, in society, having property, they have such a right to the goods, which, by the law of the community are theirs, nobody hath a right to take their substance, or any part of it from them, without their own consent. If such then, gentlemen, is the principle which ought to regulate the intercourse between man and man, in the common affairs of life; by how much more ought that principle to be observed by the legislature itself, to whom the most sacred of all truths has been committed, and whose breach of any sound and salutary principle will be the more criminal, in proportion as such breach will be more extensively mischievous?

These are the principles of a man who has a long time deservedly passed for one of the greatest masters of reasoning which England ever produced; who wrote in express vindication of the revolution; and who, afterwards, held a place under king William (and would to God places had been always as worthily bestowed!) until he went to receive the final reward of his labours, from that Being who will always confer it upon those who deserve it well. Gentlemen, it is worthy of remark, that, not only speculative writers upon government, but writers upon municipal law, sir William Blackstone himself, a judge, should lay down the same principle, not in express terms, indeed, but, as you will see, very strongly by implication. He says, "In a free state, every man who is supposed a free agent," (and unless a man is incapacitated by crimes or insanity, every rational being may be so denominated) "ought to be in some measure his own governor." Black. Comment. Vol. 1, p. 158. Now, if words have any meaning, what does this establish but the doctrine of universal suffrage? For I know of no other definition of liberty, than that those who are bound by the law, should have a share in the making of it, either personally, or by deputy; and no other idea of slavery than that state in which men are governed without this consent. Men who make laws for me, may indeed impudently tell me that I am free, for men may lie; but unless I have some share in the appointment of those who are to govern me, I can, in no sense, be said to be my own governor; but, on the contrary, have no more concern with the government of my country, than I have with those of Turkey or Morocco. Now, if the strict observance of this principle be necessary to give government a moral right to take away the property of the subject, in how far greater degree should the same principle be observed, as alone constituting a solid ground of authority, which can empower the legislation to frame laws, for a breach of which men are to be deprived of their lives?—It has been said also that the plan of universal suffrage is visionary and impracticable. But this observation, if true, though it may mark the plan itself as absurd,

must necessarily discharge from blame all those who have proposed it. For a nonentity like a phantom, is not to be dreaded, and a plan that is attended with no danger is certainly no object of legal prosecution. No, gentlemen, our Creator, I am confident, has placed every thing that is valuable, every thing that is necessary for our happiness, within the grasp of human attainment. If then we should wantonly indulge wishes, and pursue objects, which are neither proper for us, nor attainable, the true and only punishment should be (as it must be) the frustration of our hopes, and the anguish of our disappointment. If, like children, we cry for the moon, like children we should cry on.

But, fortunately for me, gentlemen, my experience enables me to give a flat contradiction to the position advanced. I myself resided, during four years, in a country where every man who paid taxes had a right to vote; I mean the commonwealth of Pennsylvania. I was an eye-witness of many elections which took place in Philadelphia, the capital of the state, an industrious and populous city, and can safely assert, that no one riot ever ensued. For in truth, gentlemen, the representative had no interest distinct from his constituents; the office which he undertook was rather a burthen than a benefit, and as the government was too poor to purchase, and the people too virtuous to barter away their liberties (even if the case had been otherwise) so the deputy, though he had every opportunity to serve, had no temptation to sell his constituents. What then has been found by experience to be wholesome food for Americans, can never prove hurtful or poisonous to Britons, the parent stock from whom Americans are descended.

Gentlemen, I am aware that every practice and institution is alone defensible upon its own intrinsic merits, and the reason of the thing; yet the adoption of any principle, by men eminent for virtue and learning, is certainly no small presumption of the soundness of the principle itself. Gentlemen, sir William Jones, a name too distinguished in literature to derive splendour from any encomiums I can bestow upon it, and who has acted as a judge for more than twelve years in India, previously to his departure published a tract in which he vindicated the doctrine of universal suffrage. At a very early period of my life, I was honoured with the friendship and patronage of this gentleman, and I am sure he would deeply feel, even after this long separation, any calamity which might befal me; a calamity (if it be one) certainly not altogether, but in some measure, perhaps, produced by conversation with those whose practices were pure, and whose principles I conceived to be just, and who were therefore objects of reverence among men. Yet this very gentleman, at this very period, holds an office of great trust and great emolument in his majesty's important settlement of Bengal, and unseals those sacred fountains of justice which gladden and refresh fifteen millions of men.

Gentlemen, having now proved to you that the principles of which I am accused must be, in fact, the principles of all good government, and that they have been supported by the greatest of all human authorities; I shall now prove, I trust, equally to your satisfaction, from incontrovertible historical documents, that they are also congenial to the spirit of our constitution.

Gentlemen, Montesquieu has told us, that the rudiments of our excellent constitution are to be sought and found in the woods of Germany; where, as Tacitus informs us, all were free, and where all were entitled to deliberate upon matters of national importance. No proposal could pass into a law, binding upon the people, which had not been approved by the people.

"De Germania. De minoribus rebus *principes* consultant, de majoribus *omnes*. Ita tamen ut ea, quoque, quorum penes plebem arbitrium est apud principes *pertractentur*." I have adopted the reading of Colerus and Ædalius in preference to the common reading which is *pertractentur*, and which corresponds to the προβουλεύεσθαι of the Greeks, the proper business of the ancient senates.

Gentlemen, in the earliest stages of society, when commerce was scarce budding, almost every inhabitant held a certain portion of land: and as land alone, in those days, was the fund from which taxes were raised to support the expenses of government, so every land-holder (of which description was almost every member of the community) had a right to vote. Squire, in his view of the Anglo-Saxon government, a book of very profound research,—gentlemen, Squire was archdeacon of Bath, and afterwards bishop of St. David's, and it is certainly no part of the episcopal function to disseminate seditious doctrines among the people,—Squire tells us, the affairs of the country were, at that time, conducted by the king, the witenagemot and the myclegemot. The witenagemot, or king's court, was an assembly of the best and the wisest men in the nation, corresponding to what our privy council is, or (I beg pardon of our ancestors) corresponding to what a privy council ought to be. The myclegemot, on the other hand, were a body chosen by the people at large, corresponding to what the principles of our constitution suppose the parliament should be, a real representation of the people. "The witenagemot (says Squire, see p. 190) were persons supposed to be best acquainted with the exigencies of the public. It was their duty to propose what they thought most expedient for the good of the whole; the new laws, especially, seem all to have been drawn up and prepared by them, though nothing which they did of this kind was obligatory to the community, until it had received the general confirmation." How was this general confirma-

tion to be brought about, but by the vote of every freeman? a term applicable to all, except such as were in a state of personal slavery, who upon the Norman conquest, were denominated villeins; a set of men corresponding to what, your lordships well know, the civil law calls *adscripti glebæ;* but who have ceased to exist in this country for near a century and a half, villenage being formally abolished by an act of parliament, passed in the early part of the reign of Charles 2nd. As it is strictly conformable to the spirit of our constitution, to continue all laws and customs *in favorem libertatis*, so personal slavery being now done away, and all British citizens being freemen, they are of course entitled to all those privileges which even the express letter of our early constitution conferred upon them, as described, exercised, and enjoyed in their fullest extent.

Gentlemen, this was the form of government, which in a very early period prevailed; these were the principles which flourished during the reign of the great Alfred, than whom never lived a purer legislator; and who Hume, in express terms, tells us, approached as nearly to human perfection as the infirmities of human nature would admit. If then, gentlemen, these doctrines are conformable not only to the universal principles of justice and of reason; if they are so expressly maintained by so respectable an authority as that of Mr. Locke; if they are implicitly assented to by so respectable a judge as sir William Blackstone (for the words "every man is his own governor," mean that, or they mean nothing), if they have been publicly avowed by sir William Jones, who, in point of learning, yields to no man to whom this kingdom has given birth, since the days of lord Bacon; I cannot surely be charged with innovation and a design to disturb the public peace, for having circulated principles that have long been current, and which men of so distinguished reputation have acquired fame in supporting.

Gentlemen, I know much nonsense has been talked about virtual representation: but if representation be not real, it is no representation at all. I wish to God that the supporters of virtual representation would impose on us only virtual taxes, and inflict virtual punishments; but this they will not do: therefore, till that event, I do not think they have any right to more than virtual taxation. Gentlemen, I lay down these principles as subjects for your consideration merely; for I hold that every inconvenience is to be borne for the preservation of the general peace. But whenever governments act directly contrary to the end for which they were instituted; when, instead of being the guardians, they become the oppressors of our liberties, common sense, common justice, and express law authorities, will tell us they are no longer objects of obedience: and this our ancestors confirmed, when they established the revolution.

Gentlemen, I am not so well skilled in the historical antiquities of Scotland as I could wish, or, perhaps, as it was my duty to have been; but I beg you will carry this principle continually in your minds, that if such have been the privileges of England, and if this country is entitled, by the articles of union, to the same privileges, I see no offence in wishing, and attempting to effect, that Scotsmen should be admitted to a participation of the same rights. I have, in my hand, a book of the late Dr. Stuart, who has written upon the public law and constitution of Scotland, in which are several passages that favour, very much, the doctrines I have laid down, and which, at the same time, prove a strong similitude between the ancient Scottish and English constitutions.—"In the body of the laws of William the Lyon, who began to reign in the year 1165, are these notices: Assisa regis Willielmi, facta apud Perth, quam episcopi, abbates, comites, barones, thani, et *tota communitas regni*, tenere firmiter juraverunt." "An assize of king William, made at Perth, which the bishops, abbots, knights, barons, thanes, and *the whole community of the kingdom*, firmly swore to maintain." Cap. 7.—And again, "Statuit rex per concilium et assensum *totius communitatis suæ*." "The king hath enacted by the advice and consent of *his whole community*." Cap. 4.—The preamble to the laws of Robert 1st, is also in these words: "Habitoque solemni tractatu, cum episcopis, abbatibus, prioribus, comitibus, baronibus, et aliis magnatibus, *de communitate totius regni*, ibidem congregatis, super variis et arduis negotiis," &c. "The constitution was greatly treated of, with the bishops, priors, knights, barons, and other great personages, of *the whole community of the kingdom*, at the same time gathered together, upon various and arduous affairs."—So, when John Baliol told Edward 1st, that he "could not, and dared not, express any sentiment which concerned his kingdom without consulting his people," he meant something more than the sanction of the prelates, the nobles, and the tenants *in capite*. Ryley Placet. Parl. p. 159, an. 1293. And Dr. Stuart, that profound and laborious antiquary, positively says, that "the expression of Baliol is easily comprehended, and had a reference to the whole kingdom." (See "Observations concerning the Public Law and Constitutional History of Scotland," p. 334.) The expression *magnates*, or great men, which is found in the statute of Robert 1st, that I have just quoted, may, I am aware, be supposed to apply only to persons of higher rank, yet, upon examination, it will, I am confident, be found strictly applicable to the representation of the people, the *tota communitas*. For in England it appears exactly in the same sense; and we know, both from Rymer and Petyt, that in that kingdom, noble, most noble, most illustrious, most precious seignors, monseignors, and sirs, were appellations of the commons,

love of glory, and a passion for promoting the public weal, would rouze themselves from that supineness which invites oppression, and which is too often the bane and destruction of nations. For, under the present system, many persons having scarcely any concern with the government, except as they are called to support it by the payment of taxes, they either grow careless and indifferent about the measures which it adopts, or seek to better their condition by recourse to violence.

Gentlemen, it appears that such also was the law of Scotland; for I find, by a statute passed in the first parliament of James 6th, in the year 1587, "it is ordained, that the commissioners of all the schirreffdomes of this realme be elected be the freehalders foresaids, at the first head court after Michaelmes *eirly*." It is, therefore, no new doctrine in Scotland, any more than it is in England. And I find, by an article of the "Claim of Rights," that the old Scottish constitution was to be restored; which claim of rights certainly took place after the passing of that act, and which act constitutes an essential branch of the Scottish constitution.

A very eminent writer, gentlemen, upon annual parliaments, begins his book with this very remarkable observation: "Where annual election ends, slavery begins." And he states precisely the reasons that I have stated to you, that if power continues long in the same hands, it has a tendency to corrupt, and that it should not only be delegated for the benefit of those over whom it is exercised, but, that it should also be delegated in such a manner as to prevent any permanent, if not immediate abuse of it.

Gentlemen, I now come to the period of the Revolution, an event which established our constitution, it is said; a constitution, however, which weak men, I fear, praise without understanding, and which wicked men violate while they praise. The English delegates have been charged with an intention of having come to this country, for the purpose of destroying those advantages and benefits which the subjects of the two united kingdoms derived from that glorious event. If the charge could be brought home to us, it would not be merely a transportation to Botany Bay, which ought to be our fate, but an execution at the gallows. But the charge is totally unfounded, and I am surprised that it has been brought forward by persons in particular situations; since that charge, like many others, will, upon examination, recoil on the heads of those who made it. I will show you, gentlemen, that the benefits of the Revolution have been done away, but not by us; for it was our purpose to revive them. Has it not been proved, by Mr. Wharton, in the House of Commons,* in a speech to which no answer was given, that not one single vestige remains of the wholesome regulations which the Revolution produced? I know that it is treading over beaten ground; but I trust, you will not think your time uselessly consumed, when it goes to establish a point, upon which my guilt or innocence materially depends. I shall now read to you extracts from a pamphlet, of which I am not ashamed to avow myself the author, intituled "Address of the British Convention to the people of Great Britain," and which was drawn up by me at their express direction: "The spirit of Alfred again rose to animate the councils of his regenerated country. Scotland, which had long groaned under the domination of an austere and insolent aristocracy, was called in to share with her brethren of England, the blessings of freedom, which she had contributed to produce. Placemen and pensioners were excluded by law from the House of Commons, lest a sense of their dependence on the crown should, as it must, make them forgetful of their duty to the people. Parliaments were not to sit for more than three years, since power long continued is commonly abused, as those entrusted with it are too prone to forget the hand which gave, and the purpose for which it was given. Ministers were made answerable for the counsels which they afforded, and the throne, now guarded by the vigilance, and sustained by the love of all its subjects, was no longer a sanctuary for the treachery of its servants.

"Friends and countrymen, these wise and wholesome provisions, which were once the boast and security of Britons, now form only an object of melancholy remembrance. They are buried in the same sepulchre with the bodies of our ancestors. In many parliaments, which have sitten since the Revolution, placemen and pensioners have been so numerous, as to control the will, while they violated the rights of the people. Since that time, parliaments have more than doubled the term of their duration, not by an appeal to the voice of their electors, but by the arbitrary effort of a self-constituted authority. Judging from this specimen, and drawing the natural inference, that what has been done may be done again, we know of no barrier or security, at present existing, to prevent a future parliament from enlarging the term of their duration to twenty years, or, if it suits their interest or ambition, from declaring themselves perpetual. The responsibility of ministers has become an empty name. Crimes, which during former periods would have called down upon the heads of their guilty authors the just vengeance of an injured nation, have been only a passport to opulence and power. The people of Britain have seen the very ministers who dismembered the empire, squandered a hundred millions of money, and poured out the blood of more than a hundred thousand of their fellow subjects in a cruel and desperate contest, again recalled into the confidence of their sovereign, and loaded with

* See in the New Parliamentary History, Mr. Wharton's speech on May 31st, 1793.

after the war was ended, a sinecure place of 5,000*l.* a year (now indeed devolved upon Mr. Pitt)? And do not his family, at this very hour, receive from the country a considerable income, granted during their father's ministry, by way of reversion, though I could never learn that they have earned it by their services?

Gentlemen, the right of our meeting in convention by delegation has been expressly denied by the solicitor-general, and he, (I am sure if I mistake his meaning, it is not purposely, and I beg he will interrupt me) I think he denied our right to meet by delegation. Had we met as the united delegates of all Britain, we should have arrogated a title to which we had no right. But we did no such thing; we met only as the representatives of some thousands, who delegated us for a purpose which we knew to be constitutional; and we conducted ourselves in a manner firm, but peaceable.

If, in the common concerns of life, a man can receive a power of attorney to manage the pecuniary concerns of another; so, I trust, he is authorized to carry into execution, for the benefit of his fellow-creatures, affairs of a much greater concernment; otherwise you deny him, in fact, that privilege, without which all others are nugatory, I mean the essential privilege of self-preservation. I am happy, however, that the charge is brought forward, as a ground of criminality; inasmuch as the meeting, which delegated us, was, publicly held in an open field, in the face of day, in the presence of many thousands of our fellow-citizens, who were calm and attentive spectators of what was passing, and in the presence even of five hundred peace officers, some of whom were members of our association, and others sent, by the secretary of state, to watch over our proceedings and to make their report. Of the latter, I can assert, from my own personal knowledge, many became converts to our doctrines; which, as they were founded in reason, and have no other object than the general welfare of mankind, must make converts of all who have not an interest in opposing what it is their duty to practise. All these things, gentlemen, were suffered to pass, under the eye of the police, under the very beard, if I may say so, of the secretary of state himself, who is, *ex officio*, the great conservator of the public peace; and in the very heart of the capital of our country, which is, or which ought to be, the great sanctuary of the law.

Gentlemen, the publicity of our conduct was certainly a proof that we deemed it to be innocent. And if the officers of state deemed it to be otherwise, upon what principle can you excuse their supineness and inactivity in not dispersing the meeting, and taking up the delegates; since, to prevent crimes is far better than to punish them, and far more the duty of the civil magistracy, unless, in the pride and haughtiness of their hearts, they sought to cherish the seeds of a state prosecution against men whom they had marked out as the victims of their resentment? Their conduct, then, we can only look on as traps to ensnare us. Gentlemen, if what I have stated be well founded, we are entitled to draw these melancholy inferences; that the articles of the Union are violated in this business, and that there is not, as the fourth article avers there shall be, "a communication of all rights and privileges between the subjects of both kingdoms;" since a man may commit, with impunity, on the other side of the Tweed, what, if he crosses it, he shall be transported for: that an unity of the principles of action, an equal and undistinguishing law, operating either to the punishment or security of all citizens alike (and which is the great badge of freemen) does not prevail among us; but that the code of the two countries is an heterogeneous mass, like Nebuchadnezzar's image, made up, partly of clay, and partly of brass. These facts it would be like burning day-light to prove, and he that runs may read them.

Gentlemen, the great and distinguishing mark of man is reason. If we are debarred from the privilege of exercising this invaluable faculty, we are reduced to a situation,—I will not say on a level with the beasts of the field, for many of them, like ourselves, are social and gregarious, and have the power (from the exercise of which the laws of this country has not as yet debarred them) of communicating their ideas, though not indeed by articulate sounds;—if we are debarred from this privilege, then, I say, we are reduced even lower than the brutes, and put upon a level with oysters and other shell-fish, whose powers of motion are limited to gape and receive, what the bounty of nature, —unlike that of the governments of the earth, which rather take than give,—confers for their support. The constant theme of the supporters of government is the excellence of the British constitution. Willing as we are to admit the position, it is certainly not unreasonable to ask how is this excellence to be ascertained. It is surely not a matter of instinct; consequently can only be ascertained by the exercise of our reason. If you deny us this privilege, or, what is nearly the same, punish us for the use of it, your government, I aver, stands precisely upon the same foundation as the governments of Turkey and Algiers; for the viziers, the bashaws, and other state officers of those arbitrary governments, so long as they are enjoying their salaries, and fleecing the people, will assert, no doubt, with equal confidence, that those governments are the best, and that all attempts to examine, or controvert by reason, the principles on which they are founded, are highly seditious, have a tendency to disturb the public peace, and are therefore deserving of the punishment of the

law. If you interdict the free use of our reasoning faculties on matters of government, and they do no more, you and they are exactly on a par; and if you do not, the dispute between us is at an end, as you concede the very point for which we are contending.

Gentlemen, it is a very melancholy consideration in the present times,—and it is with a mixture of grief and astonishment I speak it,—that the very same kind of arguments, which at the dawn of the Reformation were made use of by the Catholic clergy, who were endeavouring to hold the people in the fetters of superstition, are now made use of by those very persons, who, for purposes equally selfish, are repressing the progress of political information. Cardinal Bellarmine, a man eminent for learning, but vehement in his opposition of religious reformation, declaims particularly against the impious attempt to diffuse knowledge among the lower classes, and to lay open the Holy Scriptures to vulgar eyes. Religion in those days, it seems, like government in the present, was to be believed and confided in without being examined. Oh! preposterous insult to the dignity of human reason! Oh! blasphemy against the Author of all goodness! As if the parent of knowledge were capable of giving a revelation to his creatures, to be adopted for ages by millions of reasonable beings, that would not stand the test of human inquiry! The true religion, like all free governments, appeals to the understanding for its support, and not to the sword. All systems, whether civil or moral, can only be durable in proportion as they are founded on truth, and calculated to promote the good of mankind. This will account to us, why governments, suited to the great energies of man, have always outlived the perishable things which despotism has erected. Yes! this will account to us, why the foul stream of prejudice and calumny, which is continually washing the dissoluble fabrics of all superstitious impostures, passes without injury by the adamant of Christianity.

It is worthy of remark, gentlemen, that in our days the great champion of despotism has not scrupled to borrow his favourite phrase from a monkish writer, who was an enemy to the Reformation: Knighton, an abbot of Leicester, who wrote at the beginning of the Reformation, when he is deploring the publication of the scriptures to the common people, has this remarkable expression, "Pity it is, that this evangelical pearl should be trodden down under the foot of swine." Mr. Burke laments, that "learning should be trodden down under the hoof of the swinish multitude." In justice to the mouldering monk, I must, however, observe, that the expression considered merely as an expression, is truly beautiful; whereas, Mr. Burke's phraseology is as destitute of taste and congruity as it is devoid of benevolence.

But, gentlemen, if you take the principle of the thing, you will find that every nation has a right, not only to preserve the form of government which is actually established; but also, by the peaceful and calm operation of reason, to improve that form of government, whatever it may be. If you deny this position, you must say, that our ancestors had a privilege which we have not a right to exercise; an absurdity too gross to deserve a serious refutation; since all men being born equally with the same rights, through every succession of ages, no generation can annihilate or curtail the rights of a subsequent one. The moral right, indeed, of altering any government must always depend upon the particular circumstances of the case, but the abstract right is always vested in the people; of the moral exercise of which (however they may occasionally abuse it) they must be, and they are, the proper and ultimate judges. What, therefore, the solicitor-general has said, that we have, now, no right to frame or alter the constitution, but that it is our duty implicitly to obey it, since it was established at the revolution, and transmitted to us by our ancestors, I deny to be sound reason, or salutary political doctrine. In adopting this position, I am fortified by the authority of Algernon Sidney, than whom a purer spirit never appeared before the tribunal of his maker: "Laws and constitutions," says he, "ought to be weighed, and whilst all due reverence is paid to such as are good, every nation may not only retain in itself a power of changing or abolishing all such as are not so, but ought to exercise that power according to the best of their understanding, and in the place of what was either at first mistaken, or afterwards corrupted, to constitute that which is most conducive to the establishment of justice and liberty. But such is the condition of mankind, that nothing can be so perfectly framed as not to show some testimony of human imbecility, and frequently to stand in need of reparation and amendments. Many things are unknown to the wisest, and the best men can never wholly divest themselves of passions and affections. By these means, the best and wisest are sometimes led into error, and stand in need of succession like to themselves, who may find remedies for the faults they have committed; and nothing can or ought to be permanent but that which is perfect. No natural body was ever so well tempered and organized, as not to be subject to diseases, wounds, or other accidents, and to need medicines and other occasional helps, as well as nourishment and exercise; and he who, under the name of innovation, would deprive nations of the like, does, as much as lies in him, condemn them all to perish by the defects of their own foundations. Some men observing this, have proposed a necessity of reducing every state, once in an age or two, to the

integrity of its first principles; but they ought to have examined, whether that principle be good or evil, or so good that nothing can be ever added to it, which none ever was; and this being so, those who will admit of no change would render errors perpetual, and depriving mankind of the benefits of wisdom, industry, experience, and the right use of reason, oblige all to continue in the miserable barbarity of their ancestors, which suits better with the nature of a wolf than that of a man."—Sidney on Government, quarto edit. p. 405.

Gentlemen, we all know that the human mind is suffered to be active in the improvement of those civil arts, which conduce to the comfort and happiness of human life, I mean the mechanical arts: and shall the grand art of all, that of making men secure in the enjoyment of their acquisitions, I mean the art of government, be alone neglected, alone compelled to be stationary? But abandoning the principle and reason of the cases, the facts themselves contradict the assertions of our adversaries. Our constitution has never been stationary. It has been in a gradual state of improvement; and a writer to whom this country had the honour of giving birth, I mean Hume, expressly tells us, that the history of England is little else "than a history of reversals." Do we not know that acts of parliament are frequently set aside, and others directly contrary passed in their stead? By the treaty of Troyes, after the battle of Agincourt, which was regularly ratified and confirmed, and no opposition made to it, either by France or England, the two kingdoms were for ever unrepealably united under Henry 5th. Where is now the unrepealable union between England and France? Oaths were heaped upon oaths to bind the nobility of England never to violate any of the constitutions of Richard 2nd as Rapin assures us (vol. 1. page 245); where are his constitutions now? During three successive reigns, the national religion was three times successively changed by act of parliament. A more compleat tyranny cannot be conceived than what William the Conqueror established over the people of England. Yet but a few reigns past away, and the barons establish a legal right to redress their grievances by force. Magna Charta says "*Destringent et gravabunt nos,*" &c. The barons complaining, and failing of redress, shall lawfully distress and aggrieve the king all manner of ways, as by taking his castles, land possessions, &c. till redress is granted. After the restoration comes the corporation act, and declares all resistance unlawful. The same doctrine is preached in the act of attainder, and militia acts. Not thirty years after this comes the revolution, and abolishes the whole system of passive-obedience and non-resistance; sends the whole royal family a-packing, and brings in the house of Nassau. The liberty of the press was taken away by the 13th Charles 2nd. The liberty of petitioning was abolished the same year; and then the corporation charters were taken away. All these were restored by the Bill of Rights. Do not then, gentlemen, these facts prove Mr. Hume's words, "That the history of England is little better than a history of reversals?" There are some men, I know, who see a spectre in every bush.* Lord Nottingham, when the Union was in agitation, declared that the changing of the term England to that of Great Britain would subvert all the laws of England. And in our own days there are of the same description of men of whom we may say, that the word innovation, to use Mortimer's expression, "has frozen up their souls like fish in a pond." After all, the most useful discoveries in philosophy, the most important changes in the moral history of man, have been innovations. The revolution was an innovation; the reformation was an innovation; christianity itself was an innovation—

Lord Justice Clerk.—You would have been stopped long before this, if you had not been a stranger. All that you have been saying is sedition; and now, my lords, he is attacking christianity.

Lord Henderland.—I allow him all the benefit of his defence; but to compare the present situation of this country with what happened at the revolution, when the forms of civil government, and the liberties of the subject were done away by the infringement of all law; or with that period, in which the sovereign is said to have forfeited his life!—I cannot sit here without observing, as was done in England, in the year 1745, when the rebels were tried—I cannot sit here, as a judge, and as a man, without saying that is a most indecent defence. It is my duty to observe this; but I am for the panel going on in his own way.

Mr. *Gerrald.*—I conceive myself as vindicating the rights of Britons at large; and I solemnly disclaim all intention of attacking christianity. I was merely stating the fact.

Lord Justice Clerk.—Go on in your own way.

Mr. *Gerrald.*—I think I may be allowed that at least.

Lord Justice Clerk.—Go on, sir.

Mr. *Gerrald.*—I should have been going on if your lordship had not interrupted me.

Gentlemen, the great charge against me is, that I came down here for the purpose of carrying on reform; and if I am not allowed to go into a vindication of these general principles, and an enumeration of particular abuses, I may be condemned indeed, but I certainly am not heard. I was only arguing that the supposed principles charged upon me were such as have been adopted by the best and wisest of men; and if they can show me, from higher authority, that they are unconstitutional, I would instantly become a con-

* See Vol. 8, p. 55.

certainly did not mean what a learned lord, in his argument on the relevancy, erroneously, I hope not intentionally, stated to be my meaning, the meeting of all the people in their collective capacity, which would impede business, and give rise to tumults. No. I meant the meeting of the people in their representative capacity—but, such a representation as should collect and express their wills, as really and truly as if they had been assembled in their collective capacity. A fair, full, and complete representation—not a delusive vision, an empty phantom, an unreal mockery. This I can also inform his lordship was the only sense conveyed by my words, "the great art of government is that all should be governed by all;"* words which his lordship thought proper to ridicule because he did not understand them—and which, besides their own intrinsic weight, have been adopted by wise and virtuous men, both in ancient and in modern times. "This, therefore," (says sir William Temple, when speaking of the constitution of the ancient Germans, from which our own is, as we have seen, derived) "is that constitution, which has been celebrated as the truest and the justest temper that has ever been found out between dominion and liberty; and it seems to be a strain of what Heraclitus said was the only skill, or knowledge of any value in politics, which was the secret of governing all by all." (Sir William Temple, Miscellanies, part 2, p. 255.) Surely, if ever there was a principle of plain sense, this is one; for who so likely to promote their own interests as the persons most concerned in it? Who so eager to apply the cure, as those who feel most acutely the smart of the disorder?

Gentlemen, I am farther charged with having said, that "if governments were to instruct the poor, instead of hanging up their bodies on gibbets, the voice of the people would then be the voice of God." Now, what do these words amount to? Why, that since every government claims a right to punish, it is previously bound to instruct the subject in what he should do to avoid it. For, as the just powers of government, as we have before had occasion to observe, are derived from the people; so, no people either will delegate, or can have a right to delegate, to any set of men, the power of wantonly inflicting pain upon them; which, undoubtedly, would be the case, if the subject could, without injustice, suffer the penalty of a law, even though he had not been previously told of its existence. I speak not, now, of those moral laws which pure native intellect enables us to discover, and which may be read, as Dryden says, without the "spectacles of books," but merely of those positive regulations of society, which mere human intellect alone cannot know to be breaches of duty, unless previously instructed. In these cases, then, to withhold instruction is, on the part of government, not merely the omission of a duty, but the commission of a crime; and society sins against the man, before the man can sin against society. I therefore infer, that instruction alone can constitute a duty, and that laws can enforce no obedience but where they are explained. This, my lords, is not factious doctrine, nor calculated to weaken the principle of obedience to the laws. They are precisely the sentiments of sir William Blackstone, a judge whose principles were most unquestionably loyal, and who makes exactly the same distinction as I have done, between the *mala prohibita*, and the *mala in se*, (Blackstone's Commentaries, vol. 4, p. 8.); between offences against the law of nature, and offences against the state. The lawfulness of punishing criminals, says he, is founded upon this principle, that "the law, by which they suffer, was made by their own consent; it is a part of the original contract into which they entered, when first they engaged in society; it was calculated for, and has long contributed to their own security." Now, if the consent of the punished be the only lawful principle of authority on the part of the punisher, that consent must be either express or implied. That it is an express consent, it can never be contended; and as to an implied consent, we are still authorized to ask, what is the ground of the implication?

The publication of an act of parliament (the only mode of publication which government condescends to make use of), by the king's printer only—in the old German character, which few men can read—and which is sold at a price which as few can afford to pay; rather resembles the behaviour of Caligula, the Roman tyrant, who (according to Dion Cassius) wrote his laws in a very small character, and hung them up on high pillars, the more effectually to ensnare the people; than the conduct of a legislature, whose authority, being founded on the consent of the people, must, of course, break their trust, whenever they violate the principle which created them. To read to the prisoner, for the first time, when he stands at the tribunal, any act, for the breach of which he is arraigned, is to him precisely the same thing as it would be to originate it at the time by the same tribunal, for the express purpose of condemnation. In such case, indeed, he may perish by the forms, but certainly not by the principles, of justice. Sir William Blackstone also regrets, the frequency of capital punishments to be found in our code; and feelingly says, that "it is a melancholy truth, that, among the variety of actions which men are daily liable to commit, no less than one hundred and sixty have been declared by act of parliament to be worthy of instant death;" and adds, "that so dreadful a list, instead of diminishing, increases the number of offenders."*

* See Lord Swinton's speech, p. 898.

* 4 Bl. Comm. p. 18.

Gentlemen, it was upon a painful review of this subject, that I asserted, that "government had far better instruct the people, than hang up their bodies on gibbets." For as there is something in the nature of man, that so severe punishments have never been found effectual to prevent any sort of crime; the most effectual way to prevent crimes is, to prevent the temptation; to take care that the people be educated in virtuous principles, and every man brought up, and inured to labour and industry, that has no estate to subsist on. If this be not done, laws may be avenged, but cannot be obeyed; they may inspire terror, but can never command respect.

Gentlemen, I must observe, and I think it lies within the compass of my defence to state to you, that we can only be innocent in coming down for the purpose of procuring reform, upon this supposition—that reform was necessary; and if I had not been allowed to go into the proof of that fact, I should stand in this melancholy situation—that a charge would be brought against me, and the only proper means of repelling that charge would be denied me.

Gentlemen, I now come to the dissection of the evidence; which, I trust, you will find to be so scanty and insufficient, as that it is impossible to fix upon me any well-grounded and colourable charge of sedition.

Gentlemen, the phantom conjured up to terrify the timid; the Medusa's head, which is to petrify you all with horror and astonishment, is the motion attributed to Mr. Sinclair—but which, I shall shortly prove to you, never passed—which not only inculcated the principle of resistance, but which the British convention, it is asserted, meant to carry into execution.

I was not a little surprised, to-day, to hear this legal and constitutional principle denied, in round and unqualified terms; when it should be recollected, that it is to this principle we owe our liberties. The right of self-preservation, is a right of which no human institution can divest us, since human institutions themselves were formed only the more completely to accomplish that end. To support any political institution, therefore, by the destruction of that principle, would be absurdly to sacrifice the end to the means. "If the laws of God and men," says Sidney, "when the magistracy is left at liberty to break them—and if the lusts of those, who are too strong for the tribunals of justice, cannot be otherwise restrained than by sedition, tumults, and wars—those seditions, tumults, and wars, are justified by the laws of God and man." Sidney on Government, p. 188.—For as all magistrates are set up for the good of the people; so, whenever they act contrary to the end of their institution, they may be lawfully opposed: "Quia eatenus," as Grotius well observes, "non habent imperium." De Jure Belli, l. 1. c. 4.—Here, then, gentlemen, you see the principles of resistance laid down by a writer on the civil law (with whose works, their lordships are possibly far better acquainted than I), and recognized also by that sage and hero, the immortal Sidney, who, after a life spent in a continual struggle against vice, tyranny, and faction, fell a martyr at last to the liberties of his country. The sentence passed upon him, however, by the infamous Jefferies, has met with the unanimous execration of posterity, and his attainder was accordingly repealed among the first acts which took place at the revolution.

Gentlemen, were I called upon to give a definition of sedition or of rebellion, I would frankly avow, that I know of no other than this: the conspiracy of the law against the interests of the many. And this rebellion may be equally carried on by those who are entrusted with the power of the state, as by those who originally conferred it, and who are the objects of its exercise. "If those who by force take away the legislature," says Locke, "are rebels, the legislators themselves, as has been shown, can be no less esteemed so, when they who were set up for the protection and preservation of the people, their liberties and properties, shall invade and endeavour to take them away; and so they, putting themselves in a state of war with those, who made them the protectors and guardians of their peace, are properly, and with the greatest aggravation, rebels." Treatise on Government, octavo edition, p. 294-5.

This principle of resistance, gentlemen, is deeply interwoven in our constitution, and is as strongly laid down, even by writers on our municipal law, as it is by those who are philosophical and speculative. "The liberties of Englishmen," says Blackstone (vol. 1. p. 144) "should be perfectly known and considered by every man of rank or property, lest his ignorance of the points whereon they are founded, should hurry him into faction and licentiousness on the one hand, or a pusillanimous indifference, and criminal submission, on the other." Nor do I apprehend, that this knowledge of the rights of Britons, is to be limited merely to men of rank and property; since the poor man is, and by the same means too, equally entitled to the preservation of his mite, as the rich man to the enjoyment of his millions. And of this opinion, also, seems to be the learned judge, when, shortly after, he says, "to vindicate these rights, when actually violated or attacked, the subjects of England are entitled, in the first place," (the word subjects is certainly equally applicable to all descriptions, high and low, rich and poor), "to the regular administration and free course of justice in the courts of law; next, to the right of petitioning the king and parliament for redress of grievances; and lastly, to *the right of having and using arms for self-preservation and defence.*" Vol. 1. p. 144.—Thus you see, gen-

tlemen, that these principles are neither new nor dangerous; not new, because co-eval with the revolution; not dangerous, because avowed by a calm philosophical writer, who enjoyed the favour and patronage of his sovereign, and since supported by the authority of an eminent writer, whose office it was to lay down the principles of law, and administer justice to the subjects of these realms.

Gentlemen, I defy our bitterest enemies to prove that it was ever our intention to make any practical application of these doctrines; for, as the same learned judge well observes, "all oppressions, which may happen to spring from any branch of the sovereign power, must necessarily be out of the reach of any stated rule, or express legal provision;" so I say with him also, that "if ever they unfortunately happen, the prudence of the times must provide new remedies upon new emergencies." Blackstone, Vol. 1. p. 245.

Gentlemen, I shall now state to you, as shortly as I can, what was said by the witnesses. Mr. Scott says, I think, among other things, that when he came into the convention, on the 6th of December, he asked the chairman the object of our meeting? The reply was, that we were met for the purpose of addressing the king.

Mr. Davidson tells you, indeed, that he came for the purpose of dispersing the meeting. He was asked, also, if there was any appearance of tumult. He answers in the negative; that there was no appearance of tumult and disorder, though the president was forcibly taken out of the chair; to whom he, at first gave a friendly shake, though he was afterwards obliged to convert it into a Cornish hug. We, then, gentlemen, were the persons who were forcibly assaulted; but we did not make use of force for the purpose of repelling force.

Gentlemen, the external proofs that have been alleged, particularly of this resolution which was said to have passed, amount to what? They amount, in fact, merely, to this; that a number of papers were taken from a public inn by the officer, and put into a loose bundle; then taken by him to the sheriff's office, where they were left for some time, without any particular attention being paid to them; certainly in so loose a state that it was very possible for any other papers to have been put in; consequently all degree of credibility due to the evidence is done away, inasmuch as they were not sealed, though I understand it is always the custom to seal up papers, as it appeared from the evidence delivered to-day at the bar. For, I conceive that, after they have been in that loose state, it is impossible ever to identify these papers, unless the man has the faculty of looking through a pocket handkerchief. How is it possible, if the papers had been taken and put into a loose bundle, and suffered to lie a considerable time without any actual inspection, and several persons being in the room;—how is it possible, I say, that these papers can be proved to be the same that were taken out of the room of Mr. Sinclair?

Gentlemen, you will find one material circumstance, however, to which, I trust, you will give your most mature consideration; which is, that an attempt to identify those papers should, by all regular and due course of evidence, have been made, before they are produced to the jury, as the ground of criminating any panel at this bar; for, if they are not identified, I do not see with what colour of justice they can be brought forward for the purpose of criminating any person. This paper is not proved ever to have been adopted as a resolution by the convention. It no where appears, even in what is called the minutes of the convention, but which I deny to be the minutes of the convention; nor is there any proof that ever they were adopted by the convention as their minutes. It ought to have been proved to be in the hand-writing of Mr. Sinclair, who is the reputed author of this motion; and even if an attempt to identify his hand-writing had been made, even then I say, the evidence would still have rested upon a very precarious foundation. In the case of Algernon Sidney, it was a similarity of hand-writing that was the principal ground of his conviction. That very circumstance also, gentlemen, is recited in the act of parliament as one of the principal grounds of reversing his attainder; though the paper alluded to, was found in the closet of colonel Sidney, as this paper is said to have been found in the room of Mr. Sinclair. Sidney himself well observes, upon his trial, that similitude of hands is nothing; as hands may be so counterfeited, that no man shall know even his own hand. "A gentleman that is now dead," says he, "told me that my lord Arlington, about five years ago, desired him to write a letter, and seal it as well as he could. He wrote it with care, and sealed it with a wafer and wax upon it; and within a few days my lord Arlington brought him five letters, and he did not know which was his own."* If then, gentlemen, even if there had been actual proof, that this was in the hand-writing of Mr. Sinclair (a circumstance which never could be proved, and which has not this day been attempted to be proved), if such actual proof, I say, would not have been admitted as sufficient evidence to criminate Mr. Sinclair, inasmuch as the motion in question never became part of the minutes of the convention—far less should this scroll of paper condemn me, who am only accused of verbally supporting the written motion, which Mr. Sinclair is said to have made. If upon the trial of this excellent young man, who, at a period of life, which the greater part of mankind consume in frivolous or vicious dissipation, is dedicating his whole time to pro-

* See the case of Algernon Sidney, Vol. 9, p. 865, of this Collection.

mote the happiness of his fellow creatures;—if upon a subsequent trial, an honest and impartial jury shall, as they must, acquit him of the charge, both upon a general conviction of his innocence, and particularly, upon the insufficiency of the evidence brought against him;—what must be the remorse, what the anguish of that jury, who shall have condemned the accessary upon that very evidence, which, on the fullest investigation, shall have been found incompetent to the conviction of the principal? This event, were it possible to happen, I should most deeply deplore, not merely on account of my own personal sufferings, but for the scandal it would affix to the administration of justice, for the disgrace it would bring upon our common country; and, above all, for the deep and lasting infamy that it would entail upon you, my countrymen, gentlemen of the jury. In such case, the principle of my condemnation, would even be worse than that of Sidney; posterity would review it with equal abhorrence, and therefore let me conjure you, as you tender not only my safety, but your own personal reputation, suffer not the iniquities of those times to be revived and imputed to these.

Mr. Mack tells you, that he did not get the papers from Lyon, that they were lying in the room in the sheriff-clerk's office carelessly. Mr. Skirving's papers were sealed, it seems; but this motion, upon which the great ground of criminality is laid, is suffered to lie loose. If that precaution was not taken equally in all cases, I certainly ought not to suffer for the negligence of the officer.

There is one certain and infallible proof, gentlemen, that this motion, upon which so much stress is laid, never did, in reality, pass in the convention. It has come out in the evidence that the motion was marked by Mr. Aitcheson;—if then it was marked by him, it clearly could not have been adopted by the convention; for if it had, it would have gone into the hands of the secretary, who would have marked it with his own signature, and it would have constituted part of the minutes. On the contrary, you have strong circumstantial proof (the best that the nature of the case will admit) that so far from passing in the convention, it was even laid aside; inasmuch as it was only marked by Aitcheson, and not by the secretary, whose practice it was invariably, to mark them as an essential preparative to their insertion in the minutes. Besides, gentlemen, where was this paper found? Was it found in the possession of Mr. Skirving, when all his papers were seized, and to whose custody all resolutions that passed in the convention were regularly committed? No; it was not even pretended to have been so found; it is stated to have been found in the custody of Mr. Sinclair alone, who was a simple member of the convention, and who was never entrusted with the guardianship of its minutes. This single fact renders all reasoning upon the subject unnecessary. It amounts to a moral demonstration of what I advance; and he who would not be convinced by proof so glaring, and facts so undeniable, would not receive conviction, though one should rise from the dead.

Gentlemen, you, no doubt, are well aware, that it is the duty of jurymen to find the verdict, *secundum allegata et probata*, "according to facts alleged and proved." Many principles contained in those speeches attributed to me, I glory in having uttered, as they are perfectly reconcileable with the soundest principles of government and good order: But there are parts of those speeches which are false and spurious. Animated, as I am, with a love of truth, and determined to tell it at whatever hazard, I will neither assume what I have not said, nor deny what I have said. If then, you give me credit, which, I am sure, as honest men you cannot withhold from me, for my veracity and openness in one instance, you have no right to mistrust me in another.

I have already told you, that as jurymen you are bound to find a verdict according to facts alleged and proved. I now, gentlemen, will seriously ask, what evidence have you, that the speeches charged in the indictment, and which are copied from the Gazetteer, are the real speeches which I made in the convention? What is the mode of proof? Thomas Cockburn tells you that he had a general recollection, when he was in the habit of reading the Gazetteer, that they bore a resemblance to the speeches which he has heard me make in the convention. Gentlemen, I trust you are well aware of the sacred duty which you are now to execute, and that you will be of opinion that in a case so solemn as the present, a bare general recollection of what is said, or supposed to be said, in the heat of debate, will never constitute a sufficient ground of criminal conviction. I allow, that in the ordinary intercourses of life a general recollection is certainly sufficient ground whereon to form a judgment, otherwise human affairs must stand still. But you are not now met for the ordinary purposes of life: you are met to determine the guilt or innocence of a man, accused, on the one hand, of having disturbed the peace, and esteemed on the other, for having attempted to promote the good of his country; and upon your determination will rest, not only his fortune and his fame, but, in all probability, his life itself. What then is the evidence upon which this great stake depends? Mr. Cockburn, when pressed by my counsel, who, through the whole course of the cause have conducted themselves, not only like able counsel, but like firm and inflexible patriots, says, that he cannot identify one single passage. What does this confession amount to? That he cannot swear they are the speeches I made; for, if the terms "general recollection" have any meaning at all, I apprehend they have

this meaning, that all general recollections are composed of the recollection of some particular passages. Now, he does not identify one single passage. Some of them you may deem criminal, and others innocent; nay, even meritorious; and therefore, I presume you cannot convict any panel upon such loose indeterminate evidence; which is, at least, as likely to fix upon him what is praise-worthy, as it is to charge him with what is criminal. But he recollects "a great many words interspersed in that speech." Why doubtless, gentlemen, when Mr. Cockburn had heard any person speak for a considerable length of time, he must have some recollection upon his mind of what had passed; but I trust that words interspersed through a speech are certainly too loose to found a verdict of conviction of a far less crime than that of which I am accused, and to authorize a punishment of far less severity than such as if convicted I shall inevitably suffer.

This, gentlemen, is so far as concerns the first speech. But of the second speech he says he recollects less than of any other; though this is the speech upon which Mr. Solicitor General chiefly founds his charge, and against which he has planted the whole artillery of the law. After all, gentlemen, the witness, though closely pressed in his examination by the crown lawyers, closes his evidence with these remarkable words, "that he does not mean to identify any of the speeches."

Gentlemen, if the freedom and lives of British subjects are dependent upon the loose and general recollection of words—spoken too at a considerable distance of time,—we may, indeed, boast our liberties and the benignity of our laws, but they are merely an empty boast, and not a solid and substantial good.

But, gentlemen, there is one circumstance still stronger than any I have stated to you. If any person might be supposed to retain an accurate recollection of the speeches, it must be William Ross, who being able to write short-hand, would in all probability carry away with him, with more accuracy than any other person, the speeches which are attributed to me. Ross tells you, he never took notes by the express direction of the convention, nor ever published them by their order. Now, if charges of criminality are to be brought forward against men upon such loose evidence as this—the unauthorized transcript of a short-hand writer, and which transcript, or even verbal evidence, is to be taken as proof—we must deem the judicial process of our country not a shield of protection, but a rod of chastisement. Persons actuated by malicious motives, the retainers of a profligate administration, may enter the meetings by a short-hand writer, and, for a small gratification, may induce him to take down, as the speeches of any member, words highly criminal, but which at the same time have never been spoken; and afterwards, by procuring them to be inserted in a newspaper, may subject the party to a state prosecution. Against this engine of persecution what remedy has innocence? Why, the party aggrieved may prosecute the printer for a libel: I mean if he has money, for that is a necessary ingredient to the attainment of justice; and if he has none, however deep the injury, and calamitous its consequence, he must sit down silent under the charge, until he has an opportunity of vindicating his innocence in court, when the lord advocate, who is *ex officio* the guardian of our liberties, shall be graciously pleased to drag him, as the ill-fated victim of a state prosecution.

Gentlemen, the rules of evidence, being all founded upon the plain principles of common sense, must, in all countries, be nearly the same. In an English court of judicature, the evidence produced against me would, I am certain, be deemed incompetent to a conviction on the slightest charge. Why then, in Scotland, should not an equal measure of justice be meted out to me, an Englishman, which you, though Scotsmen, would in England readily obtain?

Furthermore, Ross, the short-hand writer, swears that he is not very well skilled in his art—which, even in the most skilful, is a fallacious mode of identifying a speech—nay, that he was afflicted with a deafness when he attended the convention, and having frequently lost the thread of my discourse, inserted, of his own invention, a great part of that which appeared in his paper. Gentlemen, is not this single confession sufficient totally to destroy the identity of the speeches, and consequently the solidity of the evidence against me? —A question was asked by one of the jurymen, which carried with it an apparent weight —whether any of the members of the convention had complained that their speeches were inserted or misrepresented? To which Ross answered, no. I am sure you cannot but be aware, that if the members of the convention had been in the constant habit of complaining of all the misrepresentations which the lying breath of rumour had circulated against them,—if they had thought it necessary formally to contradict whatever malice propagated, and credulity received,—the object of their mission must have been entirely abandoned; and instead of asserting those principles which we felt to be just, our time would have been consumed in refuting aspersions which we knew to be false. No, gentlemen, we rested upon the consciousness of our innocence, and upon the broad basis of public confidence, to which our honest and disinterested exertions had given us a claim.

George Ross depones, that I had no knowledge of the insertion of the words, *ça ira, vive la convention, liberty hall, &c.* but that he himself was the person who inserted them. I should not have repeated this insignificant circumstance, but that I observe unfair inferences have been drawn from them, in order to load us with additional guilt.

Gentlemen, I hold this to be a sound principle both of reason and of law, that if you can once prove that any meeting was in itself legal, though after the meeting any illegal resolutions were adopted, provided it cannot be proved that you were present at those meetings, aiding and abetting those illegal resolutions so passed, no degree of criminality can possibly attach to you.

You are then to advert to the general principle which proves the legality of the meeting, and not to the particular resolution, which if you did not support, can never be brought in evidence against you. Much stress has been laid upon this committee of secrecy, upon which very strange and contradictory language has been held by the public prosecutor. Sometimes we are represented as a set of desperadoes, who met in open day for the purpose of violating the laws and the subsisting constitution of the country; at other times that we met in holes and corners, as our projects were so nefarious that they could not bear the light. To round the circle of contradictions, a learned judge upon the bench has declared, that, "however criminal our intentions, our conduct was open, and in this respect our imprudence was equal to our guilt." By these various and even opposite charges, the punishment inflicted by the Sicilian tyrant, is realized upon the unfortunate members of the convention—stretched upon the iron bed of legal torture, if too long we are lopt,—if too short we are stretched. If we act with openness, there our candour is audacious guilt; if secretly, we only refrain from insulting our country by the publicity of our measures, that we may in greater security accomplish her ruin. Seven men, it seems, were deemed sufficient, by this resolution, to constitute a convention, which was to overturn the government! Absurd and impossible supposition! Were our rebellious troops, like those of Mr. Bayes at Brentford, to start up when called for? Or, is it supposed that we were to realize the fable of Pyrrha and Deucalion, and generate men by casting stones behind us? The very supposition of your giving the smallest degree of credit to this absurd allegation, would reflect such disgrace upon your understandings, and is so highly derogatory to the British constitution, the principles of which are the objects of universal reverence, that I cannot entertain it for a moment. For feeble, indeed, must the foundation of that constitution be, which can be even endangered, much more overturned, by a meeting of no more than seven individuals!

Gentlemen, from a particular expression stated in this indictment, "calamitous circumstances," you must see that we looked upon every invasion to be calamitous, from whatever quarter it proceeded;—but, if we had intended to make an open opposition to the laws of our country, or were plotting its destruction secretly and in the dark, we should certainly never have used an epithet of that description. The very insertion of the term calamitous proves to a moral demonstration that all invasions, from whatever quarter, would have been deemed objects not of approbation, but of regret.

Gentlemen, it has been said, that the admission of foreign troops into Great Britain was also one of the calamitous circumstances which would induce the convention to meet again. To this charge, if it will avail any thing to the public prosecutor, I freely plead guilty. As a Briton I shall ever think myself bound to watch with anxious attention the introduction of any foreign troops; and upon this plain principle, that I conceive the native valour of Britons is always adequate to their own protection. If it be otherwise, we hold our freedom by the most brittle tenure;—for as foreigners can have no common interest with Britons, the same mercenary arm which protects us for pay, may enslave us for plunder. But what does this resolution state? That we will do any thing unconstitutional? Far from it. It states that "we shall follow the wholesome example of our ancestors, by paying no regard to any act which shall militate against the constitution of our country." Now, before government can properly make this resolution a ground of criminal accusation against us, they must confess that they either had passed, or meaned to pass an act militating against the constitution. For under no other circumstance was any opposition mentioned or intended. Is it not rather singular then that before they can infer our guilt, they must confess their own? Acts of parliament are in general sacred things, but they may be, in particular cases, so grievous and oppressive, that human nature will revolt from them. The constitution, as treasurer Burleigh long since observed, can never be undone but by a parliament; which proves however, that parliament may undo it. In the reign of Henry 8th an act of parliament was passed, giving to the proclamations of the crown the validity of a law. It was also made a capital offence for any person to foretel the death of the king;—in consequence of which, sir Anthony Denny, his physician, when he lay at the point of death, was afraid to mention to him the danger of his situation. To judge or believe that Anne Cleves was not a virgin when she married him was declared high treason. Until very lately for a gipsey to remain twelve months within the kingdom was declared felony without benefit of clergy. In Scotland, Evenus, the third king of that name, caused a law to pass, by which the wives and daughters of noblemen were exposed to his lust, and those of the commons to the lust of his nobility.* "Tulit legem Evenus ut cuivis liceret, pro opibus, quot alere posset, uxores ducere; ut rex ante nuptias sponsarum nobilium, nobilis plebeiarum præliberent pudicitiam, ut plebeiorum uxores cum

* *Vide* addenda at the end of this Volume.

nobilitates communes essent." Buch. l. 4. c. 14. Many other acts might be mentioned which have long blotted and disgraced the statute book: are these acts, then, in the eye of reason, proper objects of obedience? Nay, are they not rather honoured in the breach than the observance? "Laws," says Hooker, "must be obeyed, unless there be reason showed that the law of reason, or of God, doth enjoin the contrary." Eccles. Pol. b. 1. sec. 16. Which plainly implies that there are bounds to the civil obedience of the subject. Acts, then, which are subversive of our happiness, are contrary to every right of civil society and comfort, utterly incompatible with all laws either moral or revealed, and therefore mere acts of power, having neither the force nor validity of a law. But I deny that it was ever the intention of the convention to resist any acts by force. The words of the resolution are, "unless compelled to desist by superior force." What was this force to be superior to? Why, forsooth, to twenty-one members peaceably met, and peaceably discussing political subjects. Nay, do not the very words themselves plainly import, that though the mere mandate of the magistrate (as such mandate would be a gross violation of the law which he was bound to observe) would be disregarded by the convention, yet the appearance of force would be the signal of dispersion? For upon what principle of common sense, or probabilities, can it be supposed that we should have wantonly exposed our lives to certain destruction by an appeal to arms; we, few in number, peaceful in intention, without ability to act, without hope to succeed, without power, without influence, without motive, without means?

But the sincerity of this declaration has been already evinced by a fact of recent date and public notoriety. When Mr. sheriff Davidson, on the last evening on which the convention sat, entered the hall, attended by constables and other officers, belonging to the civil power only, did the slightest symptom appear of an inclination to resist? No; Mr. Margarot and myself, who successively acted as presidents that evening, were indeed forcibly pulled out of the chair; because as we were conscious, that we could not be legally ordered to quit it, a voluntary abdication would have been justly interpreted as a dereliction of our right. But did we resist, I again repeat? No; Mr. Davidson's testimony this day, has confirmed my assertion. We dispersed, he tells you, without tumult or disorder. It was we, then, against whom force was employed, but who employed none. We suffered injury but offered none.

The introduction of foreign troops into the kingdom, without the sanction of parliament, is an infringement of the bill of rights, and a violation of the constitution of our country. Doctrines, I know, have been openly avowed by the minister, justifying the measure as legal and constitutional; but this avowal, I believe, struck every one who heard him, his own creatures excepted, with horror and astonishment; nor do I apprehend, that at a future though not distant period, he will be fond of repeating what in the plenitude and insolence of power he has lately advanced.

Lord Stanhope who is a member of that legislature which ought to be the peculiar guardian of our rights and privileges, and who, I believe, is as incorrupt a senator as ever this country gave birth to, since, like another Socrates at Athens, he preserves himself free from the contagion which is every where raging around him; lord Stanhope, I say, with his accustomed honest daring thus expressed himself upon the subject of which I am now speaking: "Armies (said he) have in all ages been the engines of tyranny, and by them the civil rights and liberties of all nations have been destroyed. The measure is of itself such a flagrant violation of the constitution, that if the same arguments are used in support of it in this House which have been used in another place, I make no difficulty in declaring that the authors and abettors of such blasphemous doctrines ought not to survive their treason. I feel (continued he) as little difficulty in declaring that if those treasonable doctrines are attempted to be put into execution by the executive government, it then becomes the duty of the people to resist force by force." If then, this excellent man could hold with impunity, in the senate itself, and in the presence of the great officers of state, these bold but constitutional doctrines, upon what pretext of law, or under what colour of justice can you presume to punish me, who have merely stated hypothetically, what he has advanced, plainly, openly, unconditionally?

Gentlemen, I cannot but observe one very unfair suspicion which the crown lawyers have endeavoured to infuse into your minds during the course of these trials. In order to inflame your passions, at the same time that they may assume to themselves an appearance of lenity, they tell you that the crimes with which we stand charged approach very nearly to high treason: and an appeal, not very honourable I think to the appellants, is continually made to old and obsolete statutes, on which state prosecutions were grounded when tyranny was at its height, to prove, that had we fallen, like the apostles of freedom, in the last century, on those "evil days," like them too we should have been the victims of a legal tyranny. This procedure I must consider as abhorrent, from the cool and sober rules of justice. Suffer not, therefore, I conjure you, your tempers to be inflamed, to the destruction of an innocent man, because the public prosecutor, in the rage and phrenzy of loyalty, has thought proper to dig into the dusty rubbish of antiquity, under which the embers of despotism have long been smothered, and to "awaken those sleeping lions by rattling up a company of old records which

have lain for so many ages by the wall neglected and forgotten."*

Gentlemen, another circumstance, upon which much stress has been laid, is that of a blank appearing among the minutes; and as this blank followed after the resolution which we have just now been discussing, it has been unfairly inferred, that it was our intention to fill it up with matter, at a proper and convenient season, the publication of which would have amounted to high treason. But, gentlemen, if you will turn to the minutes, you will find that there is not one blank alone, but many. And this circumstance, when coupled with the observation of the solicitor-general, must convince you how extremely dangerous it is to condemn any man upon the evidence of these minutes, which have been so long in the possession of those who are the officers and dependents of government. For, as state prosecutions are frequently the instruments by which a profligate administration sacrifice the bold and incorruptible exposers of their measures, so it is always in the power, as no doubt it must be frequently in the inclination of the public prosecutor, to fill up the blanks with more heavy and additional matter, which being confounded with the original minutes, may be offered in evidence to a jury, as a sufficient ground of conviction for high treason.

The difference of process and of the criminal codes of Scotland and England must, to every thinking mind, be a subject of most serious alarm. In the southern part of the kingdom, nay, in the capital itself, the seat of the legislature, and the fountain head of all justice, men are suffered to meet under the very beard of the secretary of state, and to pass with impunity resolutions exactly corresponding in principle, and equally strong in expression, with those which, if passed in Scotland, will send both the mover and seconder, in company with thieves, felons, and murderers, to toil and perish on the bleak and inhospitable shores of New Holland. Is the Tweed, then, which the God of nature has made only to be a geographical separation between the two countries, by the folly and wickedness of man, to be perverted into a legal, a moral, a political separation? The resolution to which I have just now alluded was a resolution passed by the London Corresponding Society, and is as follows:—"That during the ensuing session of parliament, the general committee of this society do meet daily, for the purpose of watching the proceedings of the parliament and of the administration of the government of this country. And that upon the first introduction of any bill, or motion inimical to the liberties of the people, such as, for landing foreign troops in Great Britain or Ireland, for repealing the Habeas Corpus act, for proclaiming martial law, or for preventing the people from meeting in societies for constitutional information, or any other innovation of a similar nature; that, on any of these emergencies, the general committee shall issue summonses to the delegates of each division, and also to the secretaries of the different societies affiliated and corresponding with this society, forthwith to call a general convention of the people, to be held at such place, and in such a manner as shall be specified in the summons, for the purpose of taking such measures into their consideration.

"Resolved—That the preceding address and resolution be signed by the chairman, and printed and published.—J. Martin, chairman. T. Hardy,* secretary."

Upon these resolutions, though circulated throughout the united kingdoms, no prosecution has been grounded. Are we not then to infer, either that the secretary of state has been criminally negligent of his duty, and that though he crushes sedition in Scotland, he tolerates it in England? or—for upon no other principle can he be excused,—that the resolutions and the publication of them is perfectly harmless, and that the code of Scotland, which marks them out as objects of punishment, like that of Draco, is written in blood?

Gentlemen, during my trial a principle has been laid down by the lord justice clerk, which I deem to be, in the highest degree, reprehensible, as it strikes at the root of that confidence which all men should repose in law, and of that security which all men have a right to expect from it. The lord justice clerk declared, that the judges had a discretionary power in annexing the punishment to the particular crime of sedition. Had a judge in England held a similar doctrine, the judgment-seat would have tottered under him. If law be a certain rule of action, defining the offence and annexing the punishment, the degree and nature of the punishment should be specified, with equal precision as the degree and nature of the offence; otherwise we hold our freedom as mere tenants at the will of a judge, and not as we ought, by the known and explicit declaration of the laws. Lord Camden, the first law authority in England, has said, that "Discretion is the law of tyrants; in the best men it is caprice; in the worst it is every folly, vice, and infirmity to which human nature is liable."†

Gentlemen, let not the word discretion mislead you. Legal discretion is not the arbitrary discretion of the judge. No; it is, as well defined by Lord Coke, *discernere per legem quid sit justum*, "to discover through the medium of the law that which is just and

* See lord Strafford's speech, *ante*, Vol. 3. p. 1466.

* See his trial for high treason, A. D. 1794, *infra*.

† See Vol. 8, p. 57.

proper." "Judges must determine," (says the preamble to an old statute of Henry 7th,) "not by the crooked cord of discretion, but by the golden met-wand of the law." A beautiful expression, and full of intrinsic wisdom.

"*Misera est servitus* (says lord Coke), *ubi jus vagum atque incognitum est*:" "wherever the law is vague and uncertain, the people are in a state of wretched slavery." And that law is certainly vague and uncertain, which, not specifying the punishment as well as the crime, leaves it to the arbitrary discretion of the judge.

Gentlemen, my feelings, my exertions, and my state of health have exhausted me.

Lord *Henderland*.—You may sit down, Mr. Gerrald, and take a little breath.

Mr. *Gerrald*.—I thank your lordship.

[Mr. Gerrald having rested a few minutes, proceeded as follows:]

Gentlemen, I trust that I have now proved to your conviction, the general purity of my intention, of which the object was, to carry into execution a constitutional reform in a peaceful manner; that, however, we may differ as men and citizens upon speculative principles of government, yet the doctrines which I have advanced are founded upon the great and immutable principles of reason and of truth; that they are the sentiments of the most revered writers, Locke, Sidney, Jones—that even Mr. Pitt and the duke of Richmond formerly professed to act upon them; that they are perfectly congenial to the spirit of the Anglo-Saxon government, and not in a great degree differing from the principles of the old constitution of Scotland, as Dr. Stewart has proved to you; that our peaceful resolution of obtaining a reform was never violated by our practice, as the testimony of sheriff Davidson evinces; for when assailed by the civil power we repelled not force by force—that the officers of the law violated the law in their illegal assault upon our persons; and that even then such was our desire to preserve the public peace, that we chose rather to suffer than to act; though we could have acted under the shelter of those laws which we are falsely charged with having a design to subvert.

As men whose rights and security are interwoven with our own, advert, I beseech you, to the circumstances of our dispersion. The first magistrate in this city, attended by a posse of constables, enters the convention hall, when the members who composed that convention were assembled upon a legal principle, for a constitutional purpose, and conducting themselves in a calm and peaceful manner. Without reading the riot act, for which indeed he could have no pretext, from the object and conduct of the meeting, he forcibly drags the president from the chair, and disperses the convention. At a future day, when a meeting is advertised to take place, not as the British convention, but of the Friends of the People, the magistrates of Edinburgh, attended by the town guard, block up the passage to the house which we had hired as a place for our calm and peaceful discussion, and, though not the slightest appearance of tumult existed, forcibly prevent the members from assembling.

Gentlemen, if the principle upon which these magistrates acted, be a principle authorized by any human code, I say that its operation and effect must be the abasement of the human species and the extinction of civilized society. It divests us of the right of exercising our powers of reason, and places us in a situation beneath the beasts that perish. If the magistrate of any country makes supposed principles and not actions the object of coercion; if upon his own loose constructions and speculations of danger, he commits outrage, under pretence of preventing it; if instead of arguing from the consequence to the principle, he inverts every rule of right reason, and infers the consequence from what he thinks proper to adjudge the principle, the safety and freedom of human action is at an end. In such case the magistrate takes upon himself to determine that which is undeterminable; to mark as an object of punishment, not a present and actual, but a future, possible, and contingent consequence; and, by punishing motives which have not displayed their qualities by their effects, to arrogate to his own limited and short-sighted capacity a privilege which belongs only to Eternal Omniscience.

Feeble, indeed, must be that civil government, which depends, for support, upon every trivial occasion, upon the aid of the military arm. But, in the case alluded to, we had at least one consolation; the soldiery who interposed were not a foreign but a British soldiery; and I trust, that however the latter may be, for a time, deluded, they will recollect, upon all great and trying occasions, that though necessity may have made them soldiers, yet society has made them citizens, and nature has made them men.* But not only are the principles which I defended pure; but even had they been otherwise, the evidence, I affirm, which has been produced in order to fix them upon me, has been incompetent to its avowed purpose. Not the slightest evidence has been afforded, that the convention either published, or caused to be published by their authority, these scrolls of paper attributed to them as their minutes. They never authorized the publication of any speeches which were made in the convention;

* The preceding sentence bears strong resemblance to a passage in the "Address from the United Irishmen at Dublin to the volunteers of Ireland:" for publishing which, Mr. Hamilton Rowan was brought to trial.—See the "Address," &c. in the information against Mr. Rowan, *ante*, Vol. 22, p. 1035.

nor does it appear, by any testimony, that the speeches printed in the Gazetteer were identically the speeches delivered in the convention. On the contrary, Ross, the short-hand writer, swears, that he frequently inserted, from his own mind, words and sentiments which never fell from the speaker. There is no proof that the motion attributed to Mr. Sinclair, which is the great ground for criminating me, ever passed the convention; and even if it had, an attempt to identify that motion with the paper produced, should certainly have preceded its being produced in evidence. Why was this attempt not made? The reason is obvious; it must of necessity have failed. For was it not proved to you, that all Sinclair's papers which were seized, were thrown into a loose bundle, unsealed, tossed for a considerable time about the sheriff's office, in a state in which it was very easy for any person to have inserted other papers not belonging to Mr. Sinclair, consequently all possibility of proving the identity of the papers is absolutely destroyed?

With respect to the speeches attributed to me, not one witness would identify upon oath any one single passage which they contain. And even Cockburn, whose testimony upon that point is the strongest, declares, that he has only a general loose recollection of what passed; a ground certainly too scanty and insufficient for the conviction of a man whom the laws of his country presume to be innocent; and which presumption can never be destroyed but by the establishment of stronger proof. "Stabitur præsumptioni donec probitur in contrarium:" "The presumption stands till the contrary is proved." Co. Litt.

But the particular circumstance to which I beg to chain down your attention, is the assertion of the public prosecutor, that if you were convinced that my intentions were pure, you were bound in duty to pronounce my acquittal. Yes, gentlemen, this is the solid rock of my defence;—the purity of the intention by which I was actuated. Could any thing but an ardent love of truth, and a desire of promoting the happiness of my fellow-creatures, have induced me to brave the present prosecution, and by dispelling the mist of prejudices which darkens their understandings, promote the happiness even of my prosecutors themselves? In this glorious though arduous undertaking, by what possible motive of gain or ambition could I have been actuated? Examples have not been wanting of men of whom the world was not worthy, who have fallen victims to an active and zealous virtue; but their fate will never deter firm and well regulated minds from the performance of that which they will consider as the most sacred of duties, the fulfilment of their engagements to their oppressed and insulted country. These were the sentiments which actuated the conduct of our common master when he wept over the city. "O Jerusalem, Jerusalem! thou that stonest the prophets, and slayest them that are sent unto thee; how often would I have gathered ye, even as the hen gathereth the chickens under her wing, but ye would not!"

In every relative situation of life, we should do our duty, however hazardous, and leave the consequences, which must be ultimately beneficial, to the Supreme Disposer of all human events.

Gentlemen, when you consider that one great object of the convention was, to promote a more close and sincere union between England and Scotland, you cannot reasonably convict, as a disturber of the public peace, any man engaged in so laudable an undertaking. Yes, it is our pride and our boast, that the extinction of those national prejudices, which have too long disturbed and disgraced both parts of the kingdom, was one great motive of our honest exertions. And, surely, our time is far better consumed in strengthening the cement of affection which, as inhabitants of the same island, it is so natural for us to feel, than in wasting and exhausting ourselves in the wrangles and contentions of the continent, by which we abandon our local advantages as in Flanders, and ultimately expose ourselves to become the prey of some foreign or domestic invader. To atchieve mighty conquests, is the lot of few; because few there are, who have either ability or opportunity to obtain them. But to cherish and disseminate the principles of peace and good will towards all men, is certainly the duty of all, because it lies within the power of all, and must contribute to the happiness of all. Moderate talents, steady exertion, and good intentions, are fully adequate to this end. This was all to which the members of the convention made pretence; and they repose themselves with confidence upon the judgment which their country may pass upon their conduct, whether the powers which they displayed, and the means which they adopted, were not well calculated for its attainment.

The solicitor-general, indeed, during the course of this trial, has distinguished me by a marked and particular compliment; but it was coupled with a charge, that, if I am guilty, must render me doubly so; that my efforts were exerted to disturb the peace of my country. No, gentlemen; whatever portion of talents God has thought proper to confer upon me, has never yet been prostituted to so infamous a purpose; and I turn with horror from a compliment to my understanding, which can only be purchased by the extinction of every generous sentiment of the heart, and the sacrifice of all things that are sacred among men.

Gentlemen, when I look forward to the political horizon, the prospect seems awful and gloomy to a degree, at which the best men must shudder, and the ablest men must feel themselves incompetent to describe. Every thing is turbid and portentous. Indeed a

blacker cloud never hung over this island. Those who are versed in the history of their country, in the history of the human race, must know, that rigorous state prosecutions have always preceded the æra of convulsion: and this æra, I fear, will be accelerated by the folly and madness of our rulers. If the people are discontented, the proper mode of quieting their discontents is, not by instituting rigorous and sanguinary prosecutions, but by redressing their wrongs, and conciliating their affections. Courts of justice, indeed, may be called in to the aid of ministerial vengeance; but if once the purity of their proceedings is suspected, they will cease to be objects of reverence to the nation; they will degenerate into empty and expensive pageantry, and become the partial instruments of vexatious oppression. Whatever may become of me, my principles will last for ever. Individuals may perish; but truth is eternal. The rude blasts of tyranny may blow from every quarter; but freedom is that hardy plant which will survive the tempest, and strike an everlasting root into the most unfavourable soil.

Impressed with the justice of these sentiments, dungeons, fetters, exile, carry no horror to me; for I say, with the immortal Sidney, that "though I have a particular love to my country, of which, I hope, that I have given some testimony; though I think that being exiled from it is a great evil, from which I would redeem myself with the loss of a great deal of my blood; yet, when that country of mine, which used to be esteemed a paradise, is now like to be made a stage of injury; the liberty which we hoped to establish oppressed; the best of our nation made a prey to the worst; the parliament, court, and army corrupted; the people enslaved; all things vendible, and no man safe, but by such evil and infamous means as flattery and bribery; what joy can I have in my own country in this condition? Is it a pleasure to see all that I love in the world sold and destroyed? Shall I renounce all my old principles, learn the vile court arts, and make my peace by bribing some of the crew? Shall their corruptions and vice be my safety? Ah! no; better is a life among strangers, than in my own country upon such conditions. Whilst I live I will endeavour to preserve my liberty; or, at least, not consent to the destroying of it. I hope I shall die in the same principles in which I have lived, and will live no longer than they can preserve me. I have in my life been guilty of many follies, but as I think, of no meanness. I will not blot and defile that which is past, by endeavouring to provide for the future. I have ever heard in my mind, that should God cast me into such a condition, as that I cannot save my life, but by doing an indecent thing, he shows me the time is come when I should resign it; and when I cannot live in my own country, but by such means as are worse than dying in it; I think he shows me I ought to keep myself out of it." See Sidney's Letters.

Gentlemen, I am in your hands, I feel not the slightest anxiety; if it would promote the the cause, I would chearfully make the sacrifice; for, if I perish on an occasion like the present, out of my ashes will arise a flame to consume the tyrants and oppressors of my country.

Moral light is as irresistible by the mind, as physical by the eye. All attempts to impede its progress are vain. It will roll rapidly along; and as well may tyrants imagine, that by placing their feet upon the earth, they can stop its diurnal motion, as that they shall be able, by efforts the most virulent and pertinacious, to extinguish the light of reason and philosophy, which happily for mankind is every where spreading around us.

Surely the experience of all ages should have taught our rulers, that persecutions never can efface principles; and that the thunders of the state will prove impotent, when wielded against patriotism, innocence, and firmness. Whether, therefore, I shall be permitted to glide gently down the current of life, in the bosom of my native country, among those kindred spirits whose approbation constitutes the greatest comfort of my living; or whether I be doomed to drag out the remainder of my existence amidst thieves and murderers, a wandering exile on the bleak and melancholy shores of New-Holland, my MIND, equal to either fortune, is prepared to meet the destiny that awaits it.

"Seu me tranquilla senectus
"Expectat, seu mors atris circumvolat alis;
"Dives, inops; Romæ, seu fors ità jusserit
"EXUL."

To be torn a bleeding member from that country which we love, is indeed, upon the first view, painful in the extreme; but all things cease to be painful, when we are supported by the consciousness that we have done our duty to our fellow-creatures; and a wise man rising superior to all local prejudices, if asked for his country, will turn his eyes from "this dim spot which men call earth, and will point, like Anaxagoras, to the heavens." *Milton.*

Gentlemen, my cause is in your hands.—You are Britons.—You are freemen.—Nothing more therefore is necessary to be said. You have heard the charge; you have heard the evidence; and you know the punishment which follows upon conviction. Weigh well, then, whether the charge itself involves any guilt; whether the evidence produced affixes that charge upon me; and above all, whether, in case of conviction, the punishment which I am to suffer, is not more than proportionate to the offence.

Before I take my leave of you this night, —perhaps for ever,—let me remind you, that justice is in every situation, and in none more than that of a jury, to be administered in mercy. Upon your strict attention to this

ment of the country, exciting them to rise up, and overturn the government by superior force?

Gentlemen, it is said, that the description of their meetings, calling themselves citizens, dividing themselves into sections, making conventions of emergency, secret committees and all the rest of it, are innocent things in themselves; and I do not think his majesty's advocate has laid them as a crime, unconnected with any other circumstance; but, gentlemen, the text is always best understood by the context; you are not to take this paragraph in the indictment by itself, but from the whole, as laid and as proved, you are to judge of the meaning and intention of the parties here. And when you find meetings established in this country, under denominations never before known, as committees of emergency, of organization, of finance, and all the rest of it; when you see that assumed at a period when we are in an open declared war with France, when we ken that it is borrowed from the convention of France, and when you compare it with the whole of their conduct, particularly the resolutions of that meeting and the speeches, I say, you will consider, whether, upon a fair construction of the whole, they were not imitating France in the form of their government, and that the object of their meeting was, like France, to overturn the established constitution, and put every thing upon the same footing with France, where aristocracy is reviled, the king reviled, and indeed where there is no constitution at all. That, gentlemen, is the great object of your inquiry; and when you attend to the whole of the resolutions and motions, as they appear upon the face of the minutes, which were recovered out of the hands of their own secretary, and compare them with the papers found in the possession of Margarot, Sinclair, and Gerrald, and also, with the parole evidence that has been given in this case, you will judge whether, upon the whole, it does not appear to you, that these people were imitating the French convention, and that they meant to follow the spirit of the French, in establishing their form of government.

Gentlemen, there is a number of seditious resolutions and speeches in this indictment, and one of them a very capital one, which I think borders as near upon high treason as any thing I ever saw: "That this convention, considering the calamitous consequences of any act of the legislature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themselves, or by delegation, to discuss any matter relative to their common interest, whether of a public or a private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our known and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country; and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people and annual election, until compelled to desist by superior force." The language of this resolution is too plain to need any illustration. It is absurd to suppose that they meant to carry any thing by strength of arms; for what could such a small number do against the military force of this country?—twenty-one is the number to precede the action; but that is not the number of people to be engaged in this action, for they were only the delegates of the people; and it appears that these delegates, when they opened their secret letters, were to convene their constituents and repair to the place of meeting. I hope there were not many of them; but if they had been allowed to go on, I dare say they would have been found to be the representatives of a great many more than I could wish for.

Now, gentlemen, when you consider the whole of this resolution, and the speeches, and the sealed letter to be given to each delegate, the contents of which are not to be known, and when the very emergency has happened upon which they were to meet (for the landing of foreign troops is one of them), is it possible for you to believe that it was merely a reform in parliament that they intended? if it was, there was no occasion for any secrecy at all; but on the other hand, if a rising of the people was intended, then I conceive that a committee of secrecy, and a convention of emergency, are necessary and prudent, and the idea of a reform in parliament is all nonsense; for if that was their intention, they would have made their application openly to parliament, and parliament would have granted or withheld their petition.

Gentlemen, it is very observable that there is a blank in the minutes: now, in order to supply that, there is a paper recovered from the possession of Charles Sinclair, "That in case the minister, or any other member of either House of Parliament, bring forward a motion for leave to bring in a convention bill, such as has passed in Ireland, to prevent the people from meeting according to their just rights by the revolution, the same motion shall be notice to the delegates to meet in convention to assert their rights."

Gentlemen, it is said that this paper is not authenticated: and to be sure, if you think it is not, you will lay it out of your consideration: but in the first place, it was found in Mr. Sinclair's chamber, tied up in a handkerchief, and brought in a chaise along with Mr. Gerrald and Mr. Margarot to the sheriff clerk's office. Mr. Mack generally had the keeping of the papers there; says he, I do not think I was there when the papers were brought in, but I came in very soon after; the examina-

tions were going on, and it was put into my hand; the handkerchief was laid upon the sheriff clerk's table, the sheriff was sitting there, and the clerks, the procurator-fiscal, and so on. Is it possible to suppose that these persons—all men of character—would do that, in order to convict an innocent man, for which they ought to be hanged, by extracting evidence and putting false evidence in its place? Mack says, that he locked it up, and it was under his lock and key till it was opened and inventoried in presence of Sinclair himself, and other persons. This paper is marked at the back by Aitcheson; and Aitcheson told you, that he acted as assistant-secretary; so that this paper is endorsed by Aitcheson in character of secretary to the convention, and afterwards found in Sinclair's possession, as he was the mover I think of the amendments upon Callender's motion.

But, gentlemen, that is not all, for here are two or three witnesses tell you precisely that it was debated in the convention, and resolved on, that in certain cases this convention of emergency was to meet; and one of those cases is, if any bill should be brought into parliament similar to that which passed in the parliament of Ireland, and this is confirmed by the evidence of more than one or two witnesses. Why, gentlemen, this paper, so well authenticated, found in the possession of Charles Sinclair, brought to the sheriff-clerk's office, committed to the care of the gentleman who is the usual keeper of papers in that office, and kept under his lock and key till they were opened before Mr. Sinclair himself, I submit to you whether that is not very good evidence, that this paper (which is of the highest importance, and which borders upon high treason) is sufficiently authenticated to your satisfaction. And indeed, gentlemen, there is a great deal more than that, because there is even Mr. Gerrald's first speech, which is at such great length in the indictment, of which Cockburn swears that he recollects that a number of paragraphs in it were delivered in the meeting, and he does not pretend to say that there is any thing materially different in the paper from what he heard in the meeting; though he will not identify the whole of it, he did not see any thing remarkably erroneous in it; that is, he could not say it was *verbatim* the same, but in point of substance he could not discover any difference. Then, gentlemen, there is William Ross, a member of the convention, who writes the short-hand, he swears he took this speech down in short-hand, and from that published it in the Gazetteer, and the public prosecutor copied it from the Gazetteer; this is pretty good evidence to show that that speech was delivered in that meeting. This is the speech, "I rise to congratulate the convention," &c. [reads it from the indictment].

Now, gentlemen, in the first place, this is published in the Gazetteer, and taken by the public prosecutor *verbatim* from the Gazetteer, and it is confirmed by the parole evidence, as also by the minutes of the convention, where you will find the substance of it; and I submit to you whether there is not sufficient matter to establish this meeting to be a seditious meeting; and if you are satisfied that it is a seditious meeting, the next question is, whether this panel is guilty actor, or art and part in the proceedings of such meeting.

Gentlemen, the concluding of the libel is, that if he is found guilty, actor, or art and part of the crimes charged, that is sufficient to infer the pains of law: and the law is that if any unlawful act is committed where a number are concerned, one person may be more active in the commission of the fact than others, but in the eye of the law they are all considered as guilty, art and part in the crimes charged, and all liable to suffer the pains of law.

Gentlemen, I have anticipated a good deal of the evidence upon this head already. When you see Mr. Gerrald taking a very active part, and making speeches such as you have heard to day, I look upon him as a very dangerous member of society; for I dare say he has eloquence enough to persuade the people to rise in arms.

Mr. *Gerrald.*—Oh my lord! my lord! this is a very improper way of addressing a jury; it is descending to personal abuse.—God forbid that my eloquence should ever be made use of for such a purpose!

Lord Justice Clerk.—Mr. Gerrald, I do not say that you did so, but that you had abilities to do it.

Gentlemen, he has no relation, nor the least property in the country, but he comes here to disturb the peace of the country, as a delegate from a society in England to raise sedition in this country: I say he appears to me to be much more criminal than Muir or Palmer or Skirving, because they were all natives of this country.

Gentlemen, if you are satisfied that this meeting is a seditious meeting, I do not see how it is possible to avoid the consequence of finding this panel guilty art and part of the crime charged: but, gentlemen, it is not my verdict that is to be returned, you will return such a verdict as your own consciences will direct.

Friday, March 14, 1794.—*Eleven o'clock.*

The Court having met pursuant to adjournment, and the names of the jury having been called over, they brought in the following

VERDICT.

Edinburgh, March 14, 1794.

The above assize having been enclosed, made choice of the said sir William Forbes to be their chancellor, and the said Peter Hill to be their clerk, and having considered the criminal libel, raised and pursued at the instance of his majesty's advocate for his majesty's interest, against Joseph Gerrald, panel, the interlocutor of relevancy pronounced thereupon

by the Court, and the evidence adduced in proof of the libel, they all in one voice find the panel Joseph Gerrald Guilty of the crimes libelled; in witness whereof, their said chancellor and clerk have subscribed these presents, in their names, and by their appointment, place and date as above.

(Signed) WILLIAM FORBES, chancellor.
PETER HILL, Clerk.

Lord Justice Clerk.—Gentlemen, I am perfectly satisfied that you have given that attention to this case which it deserved; and now you are at liberty to go about your business.

Mr. Gerrald, now is your time to speak, if you have any thing to say.

Mr. *Gillies.*—My lords, I have an objection to state to this verdict. I need scarcely say that I mean no reflection upon the gentlemen of the jury who have delivered in the verdict, and who, I have no doubt meant to discharge their duty conscientiously, to the best of their knowledge. I state this objection with the more confidence, that it is not so much an objection to the words or the form as to the substance of the verdict. It is essentially requisite by the laws of this and every other country, that the jury should consider the whole evidence before them; and so much is this the case, that even if they do consider it, yet if the verdict does not expressly bear that they did so, your lordship knows better than I do that such a verdict is void. This verdict bears that the jury have "considered the criminal libel raised and pursued by his majesty's advocate, for his majesty's interest, against Joseph Gerrald, panel, the interlocutor of relevancy pronounced thereupon by the Court, and the evidence adduced in proof of the libel."

My lord, they ought also to have considered the defence which was stated, and the evidence adduced or referred to, on the part of the panel; and they not only ought to have considered these in fact, but their verdict ought to have stated, that they did consider this evidence, and that they did take into consideration this defence.

But, my lords, this is not all. In a common case I know well, that, if a verdict is returned to your lordships, stating that the jury have considered the evidence before them, no proof can be received that they have not considered that evidence. It must be taken for granted that the jury have considered it, as the verdict states that they have done so. The evidence of the verdict itself cannot in the common case be redargued, because I cannot be permitted to lead a proof of what passed among the jury after they were inclosed. No such proof can be received, in opposition to what the verdict itself bears. But what is the case here? There was here a most voluminous body of written evidence laid upon this table; these writings, it was admitted by the candour of the public prosecutor, might, and I will be bold to say, did contain much evidence in favour of the unfortunate gentleman at your lordships bar. This written evidence consisted of several hundred pages, which could not have been read in less than six or seven hours. I must say therefore, in point of fact, that the jury neither did, nor could consider the great body of written evidence that was laid before them. If I saw a man in this room last night, and if I see him here again this morning, I cannot believe that he has been at Botany Bay in the interim; in the same manner, if a jury inclose for twenty minutes, and afterwards return and say they have considered the body of written evidence, which it must have taken several hours to consider, I cannot believe them: we know that the fact must be otherwise; and the proof which I offer is complete, that the jury were only inclosed for twenty minutes, a space of time in which it was not possible for them to have read the evidence which was laid before them, and which it was their duty to read and to consider. It was the more necessary for the jury to have considered this body of written evidence, because the panel did not take the advantage of a counsel to state his defence; and however great his talents may be, he is not, he cannot be possessed of that legal knowledge and of those professional habits necessary to enable any man to comment upon evidence. It was still the more necessary for them to consider this written evidence, as the public prosecutor admitted before them, that it might contain a great deal of exculpatory proof, upon considering which, I am entitled to conclude, that the jury would either have found this gentleman not guilty, or have returned a special verdict, finding part of the crime libelled on proved, and part not proved. I need not enlarge upon what I have now stated. The jury were bound by every principle of justice, by every rule of law to consider this evidence; and I offer to prove that they did not consider it, that they were inclosed 'y twenty minutes, a space of time in which it was impossible for any human being to consider it.

Mr. *Solicitor General.*—My lords, I shall trouble you with a very few words in answer to the objections stated by my brother. The first is, that the verdict does not specially bear that the jury had considered the evidence on the part of the panel. It is a pretty good answer to that, that there was no evidence adduced on the part of the panel; the only evidence that was adduced, was on the part of the prosecutor, upon which evidence the panel was willing his defence should rest. The next objection is, that the verdict bears that they have considered the evidence adduced in proof of the libel, when it was impossible they could have done so, from the time that they were inclosed. My lord, it was perfectly unnecessary that they should consider every word of this voluminous body of evidence. The evidence which I founded

upon on the part of the prosecution could be considered in five minutes, as well as in five years. And as to the panel, I do not remember that he founded upon any one part of it; and if he did, I am sure the jury had a perfect opportunity of consideration.

Mr. *John Clerk*.—My lords, I shall trouble your lordships with but few words, and before I begin, I must take the liberty of making the same profession that Mr. Gillies did, that I have no doubt but this jury meant to discharge their duty most conscientiously and and most faithfully; but a jury of the most honest as well as faithful men may be mistaken in the discharge of that duty.

My lords, I must in the first place speak with respect to what Mr. Solicitor General said, that there was no evidence adduced on the part of the panel. It is true there was not: but he made a defence, and a very long and able defence it was, and there is nothing in that verdict which shows that the jury have taken that evidence into consideration.

With regard to the next point, it is very true that the most material parts of that evidence might have been comprehended in a very small compass; but how was this matter to be determined? It could only be determined by reading over the whole of the evidence; and the more so, because the greater part of that evidence was incompetent to be produced, and ought not to have been produced, inasmuch as they referred to a period long before the panel had any connexion with the convention. My lords, the public prosecutor himself said it might comprehend a great deal of exculpatory matter—after which concession was it not their duty to read through that evidence in order to discover that exculpatory matter? My lords, it is said that he did not found upon these papers: it is true he did not; but he made a defence of three hours and a half, in which he exhausted himself upon other subjects, leaving it to the jury, trusting that they would supply the defects of his evidence, and that they would consider the written evidence lying before them.

Lord Justice Clerk.—What do your lordships say to this?

Lord *Henderland*.—My lord, the jury in returning their verdict were not bound to say any thing farther than that upon considering the evidence they found so and so. With respect to the panel's defence, he was fully heard, and it is impossible to suppose it was not considered. With respect to the evidence that was lying upon the table, they have formed an opinion, a constitutional opinion, which they were entitled to form, and we are bound to presume that it was partly formed upon that evidence.

Lord *Eskgrove*.—My lord, I think, that with respect to this verdict, the jury have returned a very proper verdict; for my lord, it is neither necessary nor customary to say, that they considered the arguments used, either on one side or the other—if they had said that they had considered what the panel had said at the bar they must also have stated that they had considered what his majesty's solicitor general had stated in support of the charge. They are supposed to have considered both, but it is not customary to state more than they have here stated; you must believe that the jury considered every thing proved and every thing stated on both sides. As to what time they took I know not, nor is it my duty to inquire; they would take as much time as they thought proper; they have declared that they did so; and I am of opinion that there is no relevancy in the objection.

Lord *Swinton*.—My lord, the jury have stated in this verdict, that they considered all that was laid before them, the libel, the interlocutor of relevancy, and the evidence. It is not usual for them to say that they have considered the arguments. As to the time that they took to consider we have no right to inquire; they could look at the material parts of the evidence in a very few minutes; and whether they looked at it or not we have no business to inquire; if it was on their memory it was sufficient. I am convinced that they have acted honestly and faithfully, as they were bound by their religion and their oath to do.

Lord *Dunsinnan*.—My lord, an intelligent and respectable jury have, upon their great oath, returned a verdict bearing to proceed upon the evidence, and the only evidence that was laid before them, which was the evidence in support of the prosecution: every body present knows that there was none offered on the part of the panel, and they could not consider evidence which was not laid before them. As to what fell from the panel, they have no doubt considered it; and they have returned a verdict which appears to me a very proper one.

Lord *Abercrombie*.—I am of the same opinion.

Lord Justice Clerk.—My lords, I should have been very much surprised if this panel should be acquitted upon a blunder in a verdict; but the verdict appears to me to be most unexceptionable, and the objection is founded in a misapprehension of the case altogether. The panel and his counsel declared they had not any proof; if they had any proof by parole evidence, it was their duty to have brought it forward, and if they had meant to have founded upon the written evidence on the table, they ought to have pointed out what parts of that evidence they meant to found upon; and therefore you must consider that he had no evidence to bring in exculpation, and all that the jury had to consider was, the evidence on the part of the prosecution.

The public prosecutor libels upon a bundle of papers, and because two or three hundred pages of writing are produced in all, and ten lines of that is necessary to found upon in support of the charge, can it be necessary that the jury should go through it all? In cases of

forgery it may be necessary to produce very long writings, and perhaps only two or three lines of it may be founded upon for the support of the charge; but can it be supposed that it is necessary for the jury to read over the whole of it? The thing is too gross to be listened to by any court whatever. The jury considered all that it was necessary for them to consider; they considered the libel, the interlocutor of relevancy, and the proof on the part of the prosecutor. Then, they say, there was a long defence, and they should have stated that they had considered that.—My lords, the jury did their duty in not considering that defence: it was a defence against the relevancy of the indictment, and the first two hours of his speech went to show that all that he had done was innocent. But, my lords, was not it offered to the Court in a very long pleading and found relevant? I apprehend the jury have done their duty properly: they have a power, to be sure, if they think proper, even after the libel is found relevant, they may acquit, but the duties of a jury and of a judge are distinct; it is the business of the Court to determine the law as to the relevancy of the libel, and of the jury to judge of the fact; and as it was found relevant by the Court, the jury had no more to do but to consider the evidence, and, in my opinion, they have returned a very proper verdict, finding the panel guilty.

Mr. Gerrald, if you have any thing to say, now is the time.

Mr. *Gerrald*.—My lord, I have very little to say. I am as little hurt, as I am surprised, at the verdict returned; inasmuch as I find that the public prosecutor himself, in the House of Commons, anticipated the fate which I was to meet, but my lord, I trust that a moral and enlightened world, collectively, will do justice to the purity of the motives which have actuated my conduct; and I glory in being the advocate of a cause, with which is complicated truth, justice, and freedom, which I know must and will ultimately triumph.

Lord Justice Clerk.—Your lordships will now proceed to give your opinions upon the punishment which you think in this case ought to be inflicted.

Lord *Henderland*.—My lord, the panel at the bar is found guilty of the crime libelled, which is sedition. And my lord, after the very able argument and sound constitutional law which you heard from the solicitor general, it would be highly improper in me, as it would be irksome to your lordships, that I should enlarge upon the nature of this charge.

My lord, we are to consider of the punishment due to that crime, of which we have had so many miserable examples before us, that I can propose nothing else but this, that the prisoner shall be recommitted to prison, and there remain till an opportunity shall offer for carrying the sentence that I propose shall be pronounced against him of banishment, by transportation, for the space of fourteen years, into execution.

My lord, it appears to me, that by no means an adequate punishment can be inflicted for this offence; and even if this has the appearance of severity, which I cannot think it has, it is the only judgment that could be pronounced in such a case, to secure the safety of this country from the commission of such crimes. I am convinced that the people of this country, who are an intelligent, an acute, and a sensible people, however much they may be led away by seditious persons, when they come to reflect coolly, dispassionately, and fairly, upon the nature of this crime, upon the danger that arises from the commission of it, and upon the security and the safety they enjoy, by the exercise of that discretionary power, which is vested in this Court by law, will be of opinion that the judgment we pronounce this day is a just and a proper one.

Lord *Eskgrove*.—My lord, I am extremely happy, that this gentleman has had a full and a fair trial, and that he has acted with the propriety of calling in the assistance of able counsel, who have done honour to themselves, and justice to their client; and, my lord, I understand (for my state of health did not permit me to remain in Court the whole of the time) that the gentleman himself is a man of great abilities, and that he was indulged by the Court, in stating every thing that he wished to state. My lord, I apprehend, that after the arguments we have heard, there can be no doubt that this Court, by the law of this country, whatever it may be in other countries, are authorised to inflict the punishment of banishment by transportation, and that this is the only proper punishment that can be inflicted for the crime here charged, to prevent others from committing the same crime, and to keep peace and tranquillity within this part of the kingdom. And, my lord, in consequence of what your lordships have uniformly pronounced upon cases of this kind (which I am heartily sorry there has been occasion for), I cannot see any thing in this case that could authorize me to deviate from the same mode of punishment that your lordships have inflicted in the other cases.

My lord, as to this verdict of the jury, by which he is found guilty, taking under consideration all the circumstances, I am of the same opinion that has been given by my honourable brethren.

Lord *Swinton*.—My lord, in considering this crime about which your lordships have heard so much, the more I consider, and the more I turn my mind to it, the more I am convinced that this Court did right originally in imposing the sentence that they did impose. My lord, in considering this case, and comparing the punishment with the crime, I hardly know what punishment is adequate to it. It was well said by one of the ablest and

had acted with the best intentions, died the death of traitors.

My lord, I say, although the panel could have established by the clearest and the most satisfactory evidence, that his intentions were all along perfectly innocent, and his motives perfectly pure, it would have afforded no ground whatever for mitigation of punishment; but I am sorry to say that I can discover no proof of such innocence of intention. My lord, we in this world can only judge of the intentions of men from their actions; and viewing the actions of this panel, no man of the least observation can lay his hand upon his heart, and say, that the evidence affords the smallest proof of such purity of motive.

My lord, with regard to the other point, it is our province and our duty to judge of this and every other case by the law of our country; we have nothing to do with the law of any other country, and I cannot think that the law of England would suffer an offence of this magnitude either to pass with impunity, or be punished with a slighter punishment; and I heartily concur with the rest of your lordships in the punishment that your lordships have proposed.

Lord Justice Clerk.—My lords, in comparing this case with the others, I cannot find any thing that can possibly make it less criminal. My lords, transportation is, no doubt, a very severe punishment; we consider it as the highest arbitrary punishment that the laws of this country can inflict; but I think it is no more than adequate to the offence which has been proved against this panel, and of which he has been convicted by the verdict of a very respectable jury. My lords, I feel for the distresses of convicts as much as any man who hears me: but, my lords, the happiness of the innocent part of mankind requires of us to punish the guilty, and protect the innocent; and we cannot give that protection to the innocent part of society unless we inflict adequate punishments upon crimes committed against society.

My lords, in all these cases, I was very sensible that transportation was a great punishment; but, after considering all the different punishments that the laws of this country can inflict, I did not see any one punishment we could inflict which could answer the purpose of checking this evil, unless it was by inflicting the punishment of transportation alone; any other punishment would have been a very imperfect one. Simple banishment from this country is not at all proper; long imprisonment is a thing not known in this country, and very hurtful to the country as well, because we know a seditious person in prison may do a great deal of harm. I cannot have the least hesitation in thinking that the punishment of transportation for fourteen years is the least that we can inflict in this case.

My lords, we have heard a great deal of the innocence of his intentions; but it was justly observed by my brother who spoke immediately before me, that taking his own account of the matter to be just, supposing that he has acted from principle, and that his motives are pure, I do say that he becomes a more dangerous member of society than if his conduct was really criminal, and acting from criminal motives. A man acting from criminal motives is not so dangerous a member of society as a man who thinks he is acting from principle: for when a man is so misguided in his principles he overturns society and government itself. I say "*salus populi suprema lex*," and it becomes us, let his intentions be as pure as they possibly can be, to remove that man from society, and put it out of his power to disseminate these dangerous principles. I do not know whether his principles are so pure as he professed or not, but if they are, I think it justifies this punishment just as much as if he had acted from the worst of motives, and therefore any other punishment would be insufficient.

SENTENCE:

The lord justice clerk and lords commissioners of justiciary having considered the foregoing verdict, whereby the assize all in one voice find the panel Guilty of the crimes libelled: the said lords, in respect of the said verdict, in terms of an act passed in the 25th year of his present majesty, entitled "An act for the more effectual transportation of felons and other offenders, in that part of Great Britain called Scotland," ordain and adjudge that the said Joseph Gerrald be transported beyond seas to such place as his majesty, with the advice of his privy-council, shall declare and appoint, and that for the space of fourteen years from this date, with certification to him, if after being so transported, he shall return to, and be found at large within any part of Great Britain, during the said fourteen years, without some lawful cause, and be thereby lawfully convicted, he shall suffer death, as in cases of felony, without benefit of clergy, by the law of England: and ordains the said Joseph Gerrald to be carried back to the Tolbooth of Edinburgh, therein to be detained till he is delivered over for being so transported; for which this shall be, to all concerned, a sufficient warrant.

(Signed) ROBERT M'QUEEN.

The legality of the sentences passed upon Gerrald, and the other convicts, his associates, was much questioned at the time; and the subject was more than once discussed in both houses of parliament, particularly in the House of Commons, on March 10th 1794; Professor Hume has since published a learned and able defence of the doctrines established on this occasion by the court of justiciary. See his Com. on the law of Scotland respecting the des. and pun. of Crimes, Vol. 2, Ch. 10.

Such particulars as I have collected respecting the fate of Gerrald and the others, will be found in the Addenda at the end of this Volume.

in the ward of Cheap, unlawfully, maliciously, and seditiously did publish, and cause to be published, a certain pamphlet, intitled, "Politics for the People; or, Hog's Wash;" containing therein, among other things, certain scandalous, malicious, inflammatory, and seditious matters, of and concerning our said lord the king; that is to say,

"You must known then," [meaning know] "that I used, together with a variety of youthful attachments, to be very fond of birds and poultry; and among other things of this kind, I had a very fine majestic kind of animal, a game cock," [meaning thereby to denote and represent our said lord the king], "a haughty, sanguinary tyrant, nursed in blood and slaughter from his infancy, fond of foreign wars and domestic rebellions, into which he would sometimes drive his subjects, by his oppressive obstinacy, in hopes that he might increase his power and glory by their suppression; now, this haughty old tyrant," [again meaning our said lord the king], "would never let my farm-yard be quiet; for not content with devouring by far the greater part of the grain that was scattered for the morning and evening repast, and snatching at every little treasure, that the toil of more industrious birds might happen to scratch out of the bowels of the earth, the restless despot" [meaning our said lord the king] "must be always picking and cuffing at the poor doves and pullets, and little defenceless chickens, so that they could never eat the scanty remnant, which his inordinate taxation left them, in peace and quietness; now, though there were some aristocratic prejudices hanging about me from my education, so that I could not help looking, with some considerable reverence, upon the majestic decorations of the person of king Chaunticlere," [meaning our said lord the king], "such as his ermine spotted breast, the fine gold trappings about his neck and shoulders, the flowing robe of plumage tucked up at his rump, and, above all, that fine ornamented thing about his head there, his crown, or coxcomb, I believe you call it (however, the distinction is not very important), yet I had, even at that time, some lurking principles of aversion to bare-faced despotism struggling at my heart, which would sometimes whisper to me, that the best thing one could do, either for cocks and hens, or men and women, was, to rid the world of tyrants" [meaning our said lord the king, among others], "whose shrill martial clarions (the provocatives to fame and murder) disturbed the repose, and destroyed the happiness, of their respective communities; so, I believe, if guillotines had been in fashion, I should certainly have guillotined him, being desirous to be merciful even in the stroke of death; and knowing, the instant the brain is separated from the heart (which, with this instrument, is done in a moment), pain and consciousness is at an end, while the lingering torture of the rope may procrastinate the pang for half an hour; however, I managed the business very well, for I caught Mr. Tyrant by the head, and dragging him immediately to the block, with a heavy knife in my hand, separated his neck at a blow; and what will surprise you very much, when his fine trappings were stripped off, I found he was no better than a common scratch dunghill pullet; no, nor half so good; for he was tough and oily, and rank with the pollutions of his luxurious vices;"—in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown, and dignity.

And the jurors aforesaid, upon their oath aforesaid, do farther present, that the said Daniel Isaac Eaton, so being such person as aforesaid, and so devising, contriving, and intending, as aforesaid, afterwards, to wit, on the said eighteenth day of November, in the said year of our Lord, one thousand seven hundred and ninety-three, at London aforesaid, in the parish and ward aforesaid, unlawfully, maliciously, and seditiously, did publish, and cause and procure to be published, a certain other printed pamphlet, containing therein, amongst other things, certain scandalous, malicious, inflammatory, and seditious matters, of and concerning our said lord the king, according to the tenor and effect following; that is to say:

"I had a very fine majestic kind of animal, a game cock" [meaning thereby to denote and represent our said lord the king], "a haughty, sanguinary tyrant, nursed in blood and slaughter from his infancy; fond of foreign wars and domestic rebellions, into which he" [meaning our said lord the king] "would sometimes drive his subjects by his oppressive obstinacy, in hopes that he might increase his power and glory by their suppression;"—in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown, and dignity.

And the jurors aforesaid, upon their oath aforesaid, do farther present, that the said Daniel Isaac Eaton, so being such person as aforesaid, and so devising, contriving, and intending, as aforesaid, afterwards, to wit, on the same eighteenth day of November, in the said year of our Lord one thousand seven hundred and ninety-three, at London aforesaid, in the parish and ward aforesaid, unlawfully, maliciously, and seditiously, did publish, and cause to be published, a certain other printed pamphlet, containing therein, among other things, certain scandalous, malicious, and inflammatory matters, of and concerning our lord the king, among others, according to the tenor and effect following; that is to say;

"The Reflexions of a True Briton."—"Kings" [meaning, among others, our sovereign lord the king] "are wolf shepherds;

Homer styles them devourers of the people; and they do not appear to have lost their original taste;" in contempt of our said lord the king and his laws, to the evil and pernicious example of all others, in the like case offending, and against the peace of our said lord the king, his crown, and dignity.

The indictment having been opened by Mr. Raine,

Mr. *Fielding*.—Gentlemen of the jury, your attention, as a jury of the city of London, is called to another prosecution for the publication of a mischievous and seditious libel. I say another, for true it is, there have been lately many prosecutions for offences of this description, and unless it be that your servants, the servants of the public in responsible situations in government, and particularly that servant of the public, the attorney-general, should be remiss where he ought to be active, should be sluggish where he ought to be alert, or be asleep when he ought to be awake, prosecutions of this nature must come before you. When they do come before you, they come before the tribunal best calculated to determine upon every thing that such a prosecution imputes, and before the tribunal best calculated to determine upon the innocence or guilt of the accused.

Gentlemen, I take upon me to assure myself, that you are well aware of the nature and extent of the duty you are now exercising. There have been agitations lately about the power of a jury, and the interposition of a court; the differences always seemed to me extremely trifling; but now there is no kind of hesitation as to the extent of the proper province of a jury upon such occasions as the present:—it is this, and God forbid it should be otherwise, that in the very frame-work of the crime, the jury should have a full cognizance of it, and a full jurisdiction over it; that the jury should be alone the judges, as to the nature and extent of the criminality charged; that neither the book itself, nor a paragraph selected from the book, nor any expression, shall be said to be criminal, unless the jury go with that idea, which forms a part of the indictment, imputing to the publisher the criminal intention ascribed upon that indictment. God be praised, that power is fully acknowledged. All that the officer of the crown has done in this instance is—and with a vigilance becoming him—to see that the matter imputed to the prisoner now, should come before a jury of the city of London for their determination. What the duty of the attorney-general was, in the first instance, is as it were your duty now. You are to look at the circumstances as he has done; but you have a greater power than he has, for you are to determine upon the guilt or innocence of the party accused.

Gentlemen, I confess, in the agitation of questions relative to libel, it has frequently struck my mind, that some things perhaps had been better without prosecution, and that prosecutions ought to be directed against others; but in the result of all these inquiries, as far as my mind has enabled me to come to a result, I can only lament the imperfection of all possible human establishments.

If sedition were suffered to be scattered abroad among the people in any possible way, to be sure any man of common sense must easily and readily go along with me in saying, that infinite mischief must follow. What then is to be done? It is the duty of that great law officer of the country, the attorney-general, when he has information from the different persons who are employed under him, and by his directions to inform him of those things that are going on in society, if they should appear to have a dangerous tendency, it highly becomes him to put them in a state of inquiry, that punishment may follow where punishment is deserved, and punishment may follow under the administration of justice in this country, according only to the law; that idea is conveyed in a short Latin sentence, which I will beg leave to translate: punishment is only intended "*ut pœna in paucos, metus in omnes incidat;*" that is, that the punishment which must follow the conviction of the crime, should only fall upon a few, and falling upon a few glaring offenders, that all should apprehend the danger of transgressing.

The attorney-general (who cannot do himself the honour of attending before you today, and therefore it devolves upon me, in my humble station, to represent this case to you) would have said this, if he had been here, which I will say for him. I have now discharged my duty, I only submit the question to you, and it is for you to decide; he can do no more, and I am sure you will do your duty, as he has done his.

Gentlemen, the particular charge which has been stated by my friend, and had before been stated to you by the officer of the court, I shall beg the liberty of calling your attention to again. But before I do this, let me remark, that when a man is prosecuted for words spoken, it seldom happens, unless the behaviour of the person has furnished evidence against himself, either by the manner in which he has spoken the words, the place in which he has spoken the words, or other circumstances, that the evidence of intention can so fairly be got at, as to leave no doubt whatever. In a publication, likewise, it may sometimes be difficult to come at the intent of the author; but in order to do that, you must necessarily go into the context, and into the whole publication. Where it can arise as a defence for the man accused, that the words which are selected for prosecution convey a different meaning when taken in detached sentences, from what they bear in connexion with the general context, it is fair that he should have that

defence; he should have the advantage of the whole being taken together. So, on the contrary, if the whole being taken together, manifests the intention of a part, it is equally proper, that as the evidence on one side may be in his favour, so on the other side it is to be considered whether it is not against him.

Gentlemen, the paragraphs selected here, and which are stated upon this indictment by necessary innuendos, as they are called in law, that is, when a part is said to be offensive, it is necessary, in point of law, that that very expression should be so pointed out, and should be said to be so far criminal, as that it means so and so; whether the meaning be fair or not, it is your province to determine. Now, gentlemen, in the present instance, the paragraph which has been selected is of this nature.

"You must know then that I used, together with a variety of youthful attachments, to be very fond of birds and poultry, and among other things of this kind I had a very fine majestic kind of animal, a game cock," —"meaning thereby," as we have taken upon us to state upon this record, to allude to the person of his majesty.—Gentlemen, this is the meaning which is ascribed to it, whether it bears this meaning is your province, as I said before, to determine. Then, gentlemen, you are to judge of it in this way; it makes its appearance in a pamphlet, price two-pence, intituled, "Politics for the People," —Politics for the People. For whom is it meant? Is it not meant to be circulated among the people? according to the common acceptation of the term People. Politics—circumstances of public agitation submitted to the consideration of the lowest class of society.

Then the first part of the title is,—"Politics for the People," it goes on, "or Hog's Wash." I dare say, gentlemen, that many of you can account for the adoption of that term, Hog's Wash. I confess that it strikes me, it has been taken up by the author of this book, as a sort of comment upon a term or terms which escaped in the heat of debate in parliament from some member there. I remember some expression being made use of which has undergone a variety of comments, where the Swinish Multitude had been the term made use of. I confess I would not have been the person to have made use of such an expression; but, however, it does not seem to me to convey such an idea as justifies the following it up with such comments, for it has been followed up with a continuance of comment which has extended the meaning, I am persuaded, infinitely beyond the intention or beyond the mind of the gentleman who made use of it; it might have been reprehensible, I do not say but it was reprehensible, but the intention ascribed here is infinitely worse, using the words in this way is much more likely to produce the very effect which we say this libel is calculated to produce.

Gentlemen, you see the title of this pamphlet is, "Politics for the People; or, Hog's Wash;" indeed it is intituled "Number Eight," so as to manifest that there have been many preceding this publication; it is price two-pence. It begins indeed with poetry, which you will have an opportunity of seeing by-and-by if you please, but as I have much to say to you upon the present prosecution, I will not waste your time by adverting to those circumstances that are immaterial. The poetry, in the first part, I am contented you shall read at your leisure; if there is any thing that can render it pleasant to the imagination, or improving to the mind, or in any shape have a tendency to favour the defendant in the least degree, I beseech you to read it and give him the advantage of it.

Gentlemen, then we come to the second page, at the top of which there appears this:—"King Chaunteclere, or the Fate of Tyranny;" and it is supposed to be, "An anecdote related by citizen Thelwall at the Capel-court society, during the discussion of a question relative to the comparative influence of the love of life and liberty, and of the fair sex on the actions of mankind." I shall not waste much of your time in commenting upon either the passage I have read, or what follows, saving this, that Mr. Thelwall * is represented as discussing this question, and as discussing those matters which may be supposed to relate to the love of life and liberty. You will have, as I stated before, the pamphlet in your hand; look, I beseech you, a little to the agitation of the question of the love of life and the love of liberty, and if you can put any other interpretation upon it, than that which readily starts into my mind, for God's sake do it; but see if it be not this, if the very agitation of that question is not to beget a sort of indifference about the shedding of human blood, driving, as it were, the mind to a contempt of danger, and setting up an ideal liberty, not a real one; but making you suppose, or attempting to make you suppose, that every other thing but liberty, as they are pleased to call it, is to be held in contempt, that every thing which stands in the way of it, that any thing which may under any possibility be deemed likely to beget tyranny, is to be got rid of, inasmuch as it is in the way of that liberty, and that kings are in the way of liberty, and are only to be got rid of by death, by cutting off the head.

Gentlemen, it would be impertinent in me to suppose, that you are not as conversant as myself with the evils that pervade a neighbouring country.—It would be impertinent in me to suppose you are not equally apprised of

* With respect to this person, see the cases of Hardy and Horne Tooke, A. D. 1794, *infra*.

stating that which is the particular and specific ground of this indictment, can you have a doubt upon this? Then so far I am sure I may take the liberty of saying, that I have not a doubt, but your minds will go with me as to the meaning which is affixed to these words.

Then come to that which is the main part of the inquiry, and of every jury's inquiry upon a subject of this sort; the intention of the man. If the author were standing before you, it would be impossible in the nature of things, for any ingenuity upon earth to say, that he had a fair, a kind, or a good intention. What is it calculated—what is it intended for? To go among the people, to be bought up by them at two-pence a piece: so it is to be circulated, and whatever is to be inferred from this story is to be impressed upon their minds.

Gentlemen, I confess very lately when I was looking over a French publication, a pamphlet of M. Brissot, there was a passage in it that struck me with astonishment, at the neatness of the description and the justness of the remark, as to the consequence which must take place, wherever the circumstances exist which gave rise to the observation; it struck me, I say, with astonishment. He is speaking of the terrible want of order in that country, of the manner in which discontents are disseminated; and he carries his attention down to the poor cottager, who, being poisoned himself, carries the contagion not only to his own home, but spreads it around his little hut. So it is with every thing of this sort, so it is indeed, to make use of a simile if a stone be thrown into the water, at first we perceive a little circle upon the surface, another still succeeds, and then another, till the whole circumference, which is immense, is described in that circle; and, gentlemen, when we look at the possibility of disseminating discontents, we must always see that the beginning must be of this nature.

What then is this calculated for? Not to meet the eye; not to reach the ear; not to be an object of search of any man of literature, of any gentlemen such as you; but it is calculated to find its way among the lowest of the people, to excite them to discontents and commotions; such and such only can be its purpose; the very nature of the publication, the price, the title of it, all manifest this. If it were to come to the attention, if it were to fall before the eye of any men better informed than the rude and vulgar, perhaps they would have looked upon it as contemptible; but although it is so contemptible, it does not follow that it is not the less mischievous; the observation I make to you for your approbation is, that it is infinitely more mischievous, the more the thing is calculated to harass and disturb the lower order of the people.

Gentlemen, no man is hardy enough to expose himself at once to the immediate fang of the law; bad minds have always their contrivances about them; but, God be praised for the benefit of society those contrivances seldom are capable of avail; they frequently expose their authors to punishment. So it is here; not that this man, or the author, whoever he may have been, would dare openly to have attacked the king of this country, or would dare openly to say to any part of the multitude, "do this or that;" nor would he do so in his writing; but there is a contrivance made use of; it is written in a species of fable; a species of simile or allegory, as it is called, is used to convey those sentiments; but whatever the contrivance may be, we are to resort to that which is capable of unravelling the mystery in both instances; namely, the fair and sober inquiry of a jury; and whatever the nature of the concealment may be, if a man makes use of a similitude, if he is charged with meaning the king by the character of a cock,—it is for you fairly to say whether he had not this meaning, and therefore it is, that there is no possible device or artifice of a man that shall screen him from the investigation of a jury, and if a jury conceive he has so wrought up this matter by putting upon it any sort of flimsy concealment, they will strip the veil from it, they will look at it, and see what the matter is that is so concealed. So in this case the author has endeavoured, by alluding to a game cock, to conceal his intention.

But, gentlemen, I call your attention most earnestly to that which citizen Thelwall, as he is supposed to be, is discussing in this libel: you will see from the part which precedes, and the circumstances that follow, there could have been no other object in the mind of the author, than those objects to which I have alluded.

Gentlemen, when you travel a little further on in this publication (the book is not large, it would not take you up above ten minutes to read it all through), I will not indeed insult you by supposing that any of you have read it with any attention, though it may have got by accident into your hands very fairly, and you may have looked at it, and may have laughed at part of it; but you will find another part which manifests what the intention of the man is—he is, first of all, commenting upon the nature of the right which every subject has in this country, to insist upon a free and open discussion. God forbid that free and open discussion should ever be abridged; and how can it be abridged? it can never be but by those men who are the worst enemies to society, abusing the liberty of discussion. So it is with the freedom of the press, the most invaluable blessing, at the mention of which every man is alive. There is no man can check another's publication of his thoughts whatever his thoughts may be; but if those thoughts turn out to be mischievous to the public, and instead of serving the purposes of mankind, threaten their ruin and destruction, God forbid that those thoughts so pro-

mulgated should not provoke an inquiry, for then they become the fair objects of punishment.

The liberty of the press, that boast, and highest boast almost of an Englishman, how is that to be endangered? It may be in danger, for aught I know, in succeeding generations; and I am sure, if ever it is put in danger, it will be by the abuses of those who are the greatest enemies to it, at the very time they are putting on the audacious effrontery of pretending to be its friends; those men who are the authors and publishers of things like this, are at all times the men to stand forward with the most unblushing effrontery, and say, the liberty of the press is violated in our persons; conscious as they are that they are the men whose conduct, originating in the worst motives, is calculated to produce mischiefs innumerable to society; well knowing that they deserve no protection, being in the very abuse of that which ought to be looked upon as the chiefest blessing of the country. So it is with publications of this sort; this circumstance is assumed in another part of the book. Mr. Thelwall, the character supposed to be in being here, and upon the scene, is represented as attacked during the discussion of the question, and there is a sentiment which he brings forward in consequence of that attack, which is of an extremely dangerous nature indeed. After having mentioned what had passed in the society, he says:

"These circumstances are important to be generally known; since they prove, that notwithstanding the false appearances which have been artfully assumed by intriguing and interested individuals, pretending to more authority than they have, there is no power in this country that can openly and legally interfere to prevent the freedom of political discussion, if individuals will have spirit enough to assert it."

What is this but saying to any parcel of people that may be collected together in any place, "gentlemen, if you have individually spirit enough to assert, and insist upon any sort of freedom that you think proper, have but that spirit in the individual, the accumulated spirit of those individuals must be capable of carrying into effect whatever your intention may be." Is it any thing else, is it short of that? Then you see that these few pages contain nothing but political matters, and nothing on those subjects but such sort of ideas as are calculated to disturb and harass the public mind. What is this? it is called "Politics for the People;" to be scattered among the people.

Gentlemen, I think I need not farther advert either to the pamphlet, to the charge, or to that which arises out of the pamphlet, or out of the charge. I will make a few observations upon the nature of these prosecutions, and upon the defences set up. These prosecutions, I say, must be instituted, because there is no other mode in this country, or upon earth, by which publications of this sort can be checked. If you think fit, or if you think society would be benefitted by these things having their free course uninterrupted, your wishes, if they should incline that way, may, for what I know, act upon your minds so as to prevail upon you to believe, that there can be no harm in this pamphlet; but I am persuaded that it is impossible in minds like yours.

It has been said, and truly, that whenever a libel is prosecuted, it draws it into a second course of agitation, and that the very observations made upon the libel in a court of justice, become, as it were, a promulgation of the libel itself. That is extremely true, and it has happened over and over again; it has happened within my own time, and happened, I am sure, in times before, that the very matter being brought forth, and the observations made upon it, which are indeed necessary, and my learned friend, who is counsel for the defendant to-day, I am sure will exercise his ingenuity; and in doing so he will do no more than his duty to his client. His ingenuity is equal to much; I venture to think his display of talents upon this occasion will be such as to excite admiration, and the more admiration it is attended with, I hope I know myself when I say the more pleasure I shall feel. I shall be extremely happy to find, that my friend, in the observations he can possibly offer to you upon the present occasion, shall deserve your approbation, and shall deserve your admiration.

Gentlemen, whatever the talents may be when they are exerted in a case, where exertion can hardly produce any effect, and where the influence of that exertion, however you may admire the talents of the advocate, cannot possibly go the length of convincing your judgments, or in any measure of altering the determination you are to make; we admire the advocate who is on the wrong side of the question for the eloquence and learning which he shows: but thank God, in this country, there is a tribunal which is to decide, after all the exertions of the advocate. You will inquire into the naked fact; the present case is, indeed, more complicated; but in the examination you are to make, the question must be stripped at last of all the observations that I can make, feeble as they are, and it will be equally stripped of all the observations my learned friend will make, strong as they will be; putting all those out of the case, at the same time judging and determining whether I have called upon you to exercise either your feelings or your judgments, and understandings, in any way but in a fair and impartial manner, you will decide this case.

Gentlemen, I have not read the whole of the passage to you that is selected from this pamphlet, and put upon the record, because it goes down at last to those allusions which are so palpable, that it is impossible, in the

nature of things, that they can be mistaken; the trappings of royalty are mentioned; there is every sort of similitude, and every sort of allusion, from whence to infer, that the trappings are meant to apply to royalty, and royalty as existing in this country; that the king himself is that species of tyrant that ought to be got rid of, and that is only to be got rid of, by that instrument which is alluded to in another part of the little book, which you, I am sure, will see when you come to look at it, to be the unavoidable meaning to be affixed to it.

Gentlemen, I would not wish to aggravate any case to you; but does not this appear to be ferocious and savage? Supposing it to have that allusion which I have attributed to it, and to be distributed among the people, what are the ends that the writer proposes by it? The ends of it are to render the people ferocious, to render them bloody, to render them cruel, and to dispose them to carry into effect such an act of cruelty as would plunge this country into a state of wretchedness indeed. This I would say is the end proposed, the inevitable consequences that must take place from the circulation of a book of this sort among the people. I have stated that it is most evidently calculated for the lowest of the people, and not to reach any higher circles, and therefore, it is infinitely more mischievous than any, except one, libel that was ever prosecuted, which was calculated for another purpose, and that was defended under an idea of the freedom of discussion, though not justified. Justification will hardly ever follow, and I am sure, when minds like your's, view the subject fairly, and see that when what is said, is not to be palliated, is not to be excused, and cannot be justified, something may be said upon a question, however obvious it may be, however plain a proposition may be to my mind, something may be said upon it; and I may hesitate a little; but with a fair discussion of a common understanding, looking at all points which are the fair objects of human contemplation, the human mind will be at last capable of coming to a true conclusion.

Without reading any more of this book to you, which you will read after you have referred to those parts to which I have more immediately alluded, the conclusion seems to present itself to the mind in only one shape, and it is not in the power of quibble, of ingenuity, or wit, or any species of faculty that belongs to the human mind, to put any other interpretation upon it than that given by the record.

Gentlemen, there will be one more subject of your inquiry, and of your attention; but as I am perfectly assured that observations relative to that will come from the learned judge who tries this indictment, with infinitely more force than they can come from me, I may spare you the time of attending to such observations as these; that is upon the nature and the character of the first magistrate in this country. It is highly indecorous, that I am sure you will go with me in saying, for any one in the least degree to speak disrespectfully of another against whom he can have no cause of complaint; but to speak disrespectfully of the first magistrate of this country, is deemed highly indecorous and indecent, and his character therefore is for the wisest purposes particularly protected.

Then tracing this from the lowest degree of misdemeanor that can be committed against the king, tracing it from the lowest state to the highest, passing over the intermediate degrees of offences, many of them that are trifling, and still stopping short of that which comes within the verge of treason, can there be an offence more aggravated in its kind than this? It is not only treating disrespectfully, but it is treating with a degree of sarcasm in the first instance, which manifests a strong malevolence to the character; and in the next place, it is giving to the mind of every man, that can be impressed by such a publication as this, not only an indifference to the character of the king, but a perfect detestation of such character, and suggesting that the means of getting rid of such a character must be by a stroke similar to that which has taken place in a neighbouring unhappy country.

Gentlemen, I shall therefore abstain from all observations upon the royal character, as to the manner in which it is protected here, as to the utility of the office, and as to the benefit and the advantage derived from it by the inhabitants of this country, because, sure I am, you are equally conversant with the intercourses of commerce, and with the vast and important objects that result from commercial intercourse, under the blessings of a free constitution like our's, where respect to government insures that tranquillity under which alone those commercial benefits can arise, and happiness to man take place. I say, therefore, with the effects of the constitution, you are much better acquainted than I am; my walk is in a more confined way than your's; I see not so much of the manufactures and merchandise of the country, as day after day are to be found in the city of London, and which I will be bold to say, are only to be found in this city; and I will be bold again to say, that it is alone owing to the form of government that we live under; and again, that unless the royal person, the sovereign of this country, were at the head of that constitution, the effects would not be what they are.

Then, gentlemen, to what other circumstances need I advert? I am sure my friend, who is advocate for the defendant, will never suppose, that by calling your attention to these words, he can fritter them away. I think it may be suggested, because I have heard it before suggested, that here, where the cock is mentioned, and we say in our in-

dictment that it means the king; good God! the advocate may say (because an advocate can always affect astonishment), why should you suppose the king is meant by this cock? —I can only say I will leave it to the determination of twelve gentlemen, to say, whether it be so or not, I am sure it cannot be otherwise; and though he may please to say, by your legal operation of an innuendo, you may charge that the cock means the king, why you are the libeller yourself, by putting it upon the record;—I can only observe it is extremely ingenious; but you, gentlemen, will be to determine between us: therefore let ingenuity be exercised, let it have its fair course. I am sure my friend will be ingenious. I am sure in his address to you there will be much to admire; but it happens, indeed, to be a subject where there cannot be any great benefit resulting to his client from it. When my friend has done his duty, I do confess, feeling this prosecution as a matter of infinite importance, I shall look with extreme earnestness for your verdict.—I presume I shall not have any occasion to trouble you again, therefore it is fit I should make all the observations I have to offer now; it is upon that account you will pardon me for the length of time I have taken up.

I have already hinted to you, that we prosecute this man as the publisher. Now, gentlemen, when the book is sold at his house, if he be not there, he is as much guilty as if he were. This is a matter very well known to be law from the earliest time; it is one of the cases in law, where a master may be criminated by the act of his servant, even though he himself be not present. If his wife sells the libel, he is criminal; and unless it were so, the law would, you see, be frustrated in thousands of instances: the law is, that the owner of the shop, the man having the profit of the business, shall be answerable; but here the book appears to be printed for the very man at the bar, and I dare say, he will hardly deny it; from the manner in which he bears himself, I do not know, whether he might not absolutely triumph in it. But, however, with respect to the criminality, and the law attaching upon that criminality, there can be no doubt.

The evidence I shall have to lay before you, will be the most simple imaginable, that is, that the book was bought at his shop. What relates to the manner in which his business is generally carried on, I forbear to state. You perceive that with respect to these two charges, I have not even stated them to you at full length, because the book, if you please to have it, may be delivered to you, and you may there satisfy your own curiosity.

I have said before, I felt myself relieved that I had not to prosecute that man as the author; he may not be the author, I hope in God, he is not; although he is criminal as the publisher, and although the publisher does infinitely more mischief, sometimes, than the author, and often has it happened that the publisher is a stimulator to the author; yet I hope he has not the heart to be the author of some of these paragraphs.

Gentlemen, you have the case before you, I have done my duty, the attorney general has done his, and those gentlemen who have been engaged in order to bring the prosecution into a shape before you, discharge their duty when they submit it to you, and when they do that, I am sure it is in perfectly safe hands, and it would be most impertinent in me to suggest a possibility of your doing otherwise than your duty.

THE EVIDENCE FOR THE PROSECUTION.

John Boult, sworn. — Examined by Mr. *Knowlys*.

Be so good as to look at that book, and tell me whether you bought it, and where?—Yes, I bought it.

Where?—At No. 81, Bishopsgate-street.

At the time you bought it did you make any writing upon it to enable you to know it again?—Yes, within half an hour afterwards.

Is that your writing?—Yes.

Who kept that shop?—Daniel Isaac Eaton.

The defendant at the bar?—Yes.

When did you buy it?—On the 18th of November last—I bought numbers 6, 7, and 8, for a gentleman, at the same time.

Of Politics for the People, or Hog's Wash?—Yes.

Was this a separate number at the time you bought it?—Yes.

And you bought other numbers of the same sort at the same time?—Yes, numbers 6, 7, and 8.

Mr. *Recorder*.—The pamphlet he is now prosecuted for is No. 8.

Mr. *Knowlys*.—It is.

Cross-examination by Mr. *Woodhouse*.

What are you?—A news-carrier.

You get your livelihood by that?—Yes.

What induced you to go for these books?—I went to buy them for a gentleman.

Who was that gentleman?—One Mr. Bevan.

Is he a news-carrier?—No.

Did you ever appear here before?—No.

You get your livelihood solely by selling books?—Yes.

That is your sole trade?—Yes.

You never got any thing by informing, I suppose?—No, never.

Mr. *Knowlys*.—The gentleman has asked you, why you went to that shop? Did not you go to it because it was the shop where those things were sold?—Yes.

Mr. *Gurney*.—I desire that the whole of the speech of Mr. Thelwall may be read, a part only of which is included in the indictment.

Mr. *Fielding*.—You may read it as part of your evidence.

Mr. *Gurney*.—I know I may; but I con-

ceive I have a right to have it read as part of your's. Whenever a part of a paper is read in evidence by one party, the other party has a right to insist upon the whole being read at that time.

Mr. *Recorder*.—I think you must read it as part of your evidence, if you wish to have it read.

Mr. *Gurney*.—It is scarcely worth contesting; I am sure the jury will read the whole.

Mr. *Recorder*.—You certainly have a right to have the whole pamphlet laid before the jury.

[The paragraphs included in the indictment were read.]

DEFENCE.

Mr. *Gurney*.—Gentlemen of the jury; It is extremely unfortunate for the defendant, Mr. Eaton, it is perhaps not less unfortunate for me, that the indisposition of my learned leader, Mr. Vaughan, in the first instance, and his delicacy, in the second, occasion the task of addressing you this day to devolve upon me. It is unfortunate for the defendant, because he loses the benefit of those splendid talents which have been exerted once and again in his behalf, not without success;* it is unfortunate for me, because it sets those splendid talents, to a certain degree, in contrast with talents of a very opposite description. But I feel myself consoled, I feel myself animated, by this consideration, that, notwithstanding all you have hitherto heard, to the defence of this indictment, the meanest talents are more than equal.

If this prosecution could assume a shape other than the most disgusting, it would undoubtedly receive it from the very liberal, able, and eloquent manner in which it has been opened by my learned friend. But to fix an agreeable mask upon it, is not within the compass even of his transcendent abilities.

Gentlemen, it is so common a topic of complaint in these prosecutions, that I should have been surprised if it had been omitted to-day, that this is peculiarly and emphatically an age of sedition, that the press teems with libels calculated to vilify every thing that is great and good, libels designed to subvert the foundation of all government, to dissolve the bonds of society, and to introduce confusion and anarchy. If I had not received the respectable assurance I have upon this subject, if I had been left to form my opinion upon what I see on the record you have to try, I should have formed an opinion that the fact was totally different. I should have supposed that libels had become so scarce a commodity, that with all the industry of that numerous herd of spies, informers, and inquisitors, with which this metropolis now abounds, none could be found—not one; and therefore, in order to keep business alive, these ingenious gentlemen had set themselves to work to make one. For if they had not so done, Mr. Eaton would not now be standing at that bar.

My learned friend has made a liberal use of that talent, which he so eminently possesses, of working upon your passions and upon that of the audience, and in so doing he has acted judiciously, because without captivating your passions, he can have no hope of convincing your judgment. But, gentlemen, sustaining the sacred character you do at this moment sustain, I call upon you to set a guard upon those passions which are so liable to seduction, and which, when seduced, lead the judgment captive at their will. I call upon you, to apply to the consideration of this case, a judgment equally unimpassioned and unprejudiced. In order that you should do so, it becomes me now to state, that the defence of my client does not impose upon me, as you may have imagined, the necessity of endeavouring to cool the fervour of your affection for the person of the king, or to lessen your attachment to his government. If the defence of Mr. Eaton had made it requisite to avow, that a man has a right to call the king an haughty and sanguinary tyrant, I should have told him he must have recourse to some other counsel, for that in the discharge of my duty as an advocate, I could not forget my duty as an Englishman. No, gentlemen, I conjure you with equal earnestness to that of my learned friend, I wish I could do it with equal eloquence, to foster and cherish every sentiment and every feeling of affection for your king, and in the very fever of your passion, I will call upon you, and call upon you with confidence of success, to condemn this indictment, and to acquit this defendant.

But this prosecution would have been incomplete, it would have been an anomaly in the prosecutions of the present day, if the affairs of France had not been introduced. And why are they introduced? Because it is supposed that you will so far forget your duty and your oaths, as to apply any opinion which you may have formed upon them to the injury of the defendant in this cause. If considered rightly, I think the result will not be unfavourable to the defendant. Whatever disorders may have tarnished the French revolution, they afford an argument to Englishmen to prize and maintain every liberty they possess, and above all the liberty of the press.

If the French, after having been kept in darkness for ages, were, when the light first beamed upon their astonished sight, dazzled with its lustre, and therefore mistook one object for another, it is not they whom we ought so severely to censure, as the detested monsters who had so long veiled their eyes. If after having been for ages instructed in lessons of barbarity, from the open and unauthorized exercise of which they were res-

* See D. I. Eaton's cases in the preceding volume of this Collection.

trained, is it so very extraordinary that when that restraint was removed, some of them should practise the lessons their former masters had taught them? If in their progress from slavery to freedom they have had to traverse a narrow and a slippery path, assailed by foes without, and by traitors within, is it to be wondered at that many of them should stumble and should fall?

But is liberty to be decried, because at any time, or upon any occasion, licentiousness has assumed its name? No; it ought rather to stimulate every people who possess it to preserve it in its pristine purity; above all, it ought to stimulate them to the preservation of that part, without which they would sink into a state of stupid ignorance, and consequently of abject slavery.

Gentlemen, in the fulfilment of the solemn and sacred duties of jurymen, there are few cases which have a stronger claim upon your attention, than prosecutions for political libels. A prosecution for a political libel is a charge not of the ordinary commission of a common wrong, but of the abuse of a common right. I do not mean to say, that the abuse of a common right may not amount to the commission of a common wrong, but that it is a charge of a different description, requiring stronger evidence to support it, and to be decided by the application of different principles. The ordinary commission of a common wrong, is the doing an act which the law has expressly forbidden, and which, therefore, when the party does it, he knows he is amenable to the law. The abuse of a common and acknowledged right, may proceed from a mind deeply impressed with the importance of the right, and eagerly employed in its exercise, not being sufficiently acquainted with its bounds and limits. If there is any common right, into the abuse of which we should not inquire with extraordinary rigour, it is that right the exercise of which is called in question this day, not only on account of its infinite moment to the public, but because its limits have never yet been ascertained with precision. So far indeed are they from having been ascertained with precision, that no two men, no two lawyers, are agreed upon the subject.

But, gentlemen, I have not in this case to implore mercy or indulgence for excess. I have only to claim your justice. For of all the prosecutions for libels that ever came into a court of justice, I will venture to say, this is the most extraordinary, I will add, it is the most alarming. For I have no hesitation to assert, that if it were to succeed, the freedom of the press could not survive a single hour.

Having stated this proposition broadly and boldly, I come immediately to the proof of it.

The charge contained in this indictment is, that the defendant "being a malicious, seditious, and evil-disposed person, and greatly disaffected to our lord the king and to his administration of the government of this kingdom, and unlawfully, maliciously, and seditiously contriving, devising, and intending to scandalize, traduce, and vilify our said lord the king, and the regal power and office established by law within this realm, and to represent our said lord the king as sanguinary, tyrannical, oppressive, cruel and despotic, and thereby to stir up and excite discontents and seditions amongst the subjects of our said lord the king, and to alienate and withdraw the fidelity, affection, and allegiance of his said majesty's subjects from his said majesty's person and government, unlawfully, maliciously, and seditiously did publish a certain printed pamphlet intituled, 'Politics for the People, or Hogs Wash,' containing certain scandalous, malicious, inflammatory and seditious matters of and concerning our said lord the king."

My learned friend has animadverted with some severity upon the title of this pamphlet, "Politics for the People, or Hog's Wash." I really do not see any thing criminal in the title. The latter part is a play upon a phrase which has been used to describe the people, not as my learned friend has supposed, an incautious expression in the heat of parliamentary debate, but an expression deliberately and solemnly recorded in a book which has run through ten or twelve editions, and which retains its place in that book to the present hour. Now if the people are the "Swinish Multitude," I do not think Mr. Eaton is deserving of punishment for supplying them with food adapted to their nature. "Politics for the People." Whom are politics for, but for the people? Are politics for placemen and pensioners only? Are they alone blessed with understandings fitted to the investigation of this sublime and mysterious science? Or is it not, or at least ought it not to be, a subject within the comprehension of every man? But the price is twopence, *hinc illæ lachrymæ*. If it be a crime to sell a political pamphlet cheap, Mr. Eaton must plead guilty to that charge, but so far from confessing it as a crime, I state it as a merit, I challenge for him applause. Political pamphlets, I think, should be cheap. I am very sure that public order and tranquillity will never be maintained so well as when every man reads and understands political pamphlets, because there is no obedience to law so exemplary, there is no attachment to a good constitution so strong, as that which results from a knowledge of the reason and obligation of law, and the true principles as well as beneficial effects of the constitution.

Gentlemen, you perceive that in the paper which this man has published, there is not a single syllable "of and concerning our sovereign lord the king," but that every thing which is said of this famous game cock is charged by the indictment to have been meant of him, and is in words applied to him in a number of parentheses, that you will find in the indictment, which parentheses we call innuendos.

Innuendos have in former times gone such lengths as to draw down some degree of ridicule upon them, but never before, I believe, have they gone the length of the innuendos in this indictment. The sole purpose of an innuendo is, to fix the true meaning. An innuendo is not to be an arbitrary thing at the pleasure of the drawer of an indictment; it must be warranted by the context; it must be conformable to the sense of the paper: the sense of the paper must not be forced or strained; it must be the natural, the plain, the obvious, the necessary sense.

This art of drawing indictments, and contriving innuendos, and so manufacturing libels, is indeed a curious art. I do not know, and I really am at a loss to conjecture, who could have been the drawer of this indictment. From its internal evidence, I am led to suppose, it must have been the author of the Arabian Nights Entertainments, or some person equally conversant in the wild and extravagant fictions of the East. He must have have given unbridled and unbounded licence to an imagination the most wanton and the most heated, before he could have sat down to ascribe meanings to this paper, so foreign and indeed so ridiculous. All of the innuendos, in my opinion, are far from innocent, but one of them contains the most seditious assertion I have ever seen.

The drawer of this indictment might just as well have employed himself, like Dean Swift's projector, in attempting to extract sun-beams from cucumbers, as in attempting to extract sedition from this story of the game cock.

This story of the game cock appears to have been related at a debating society, in answer to a story that had been told of a negro slave enduring the tortures of a frying-pan. The story was aptly introduced to answer the purpose of the moment, in reply to a preceding speaker. But as the story of the negro slave did naturally introduce the story of the game cock, the allusion to it is not included in this indictment, because it was the business of this indictment to conceal from you the real intention with which the story was introduced, in order to impose upon you a belief, that it was then told, and afterwards published with the criminal intentions imputed. With this view the story of the game cock is not only introduced into the indictment abruptly, but it closes abruptly too; for it stops short of that part which applies it to the preceding story of the slave. These observations will be impressed more forcibly upon your minds, if when you retire to deliberate on your verdict, you take with you the pamphlet itself, and compare it with a copy of the indictment.

But, gentlemen, I do not mean to contend that the author of this story intended merely to allude to the immediate subject before him, the tyranny exercised on a negro slave. No—the defence of my client calls not on me to attempt to circumscribe, far less to explain away any meaning which these words, taken in their utmost latitude, can imply. I will concede that the mind of the speaker, in adverting to one species of tyranny, was naturally, and I maintain laudably led to contemplate tyranny in general, and that this story which he relates was calculated to expose the evil consequences of tyranny, and to point out the just punishment of tyrants. And surely Englishmen must have undergone a strange transformation, if they can endure to hear the right of doing this called in question. Why do we look back to our ancestors with such enthusiasm and veneration? but because in opposing tyranny and tyrants they fought, they bled, they conquered. It was their ardent love of liberty, it was their undaunted courage, it was their unshaken fortitude, it was their profound wisdom, that combined to rear that grand political fabric, the constitution of our country, which we have been accustomed to view with equal reverence and delight, upon the possession of which we have prided ourselves, but which I am sure we shall not transmit to our posterity, if we suffer the liberty of the press, which is its corner-stone, to be rudely torn away; and torn away it will be, if such prosecutions as these can succeed. What language do our ancestors hold out to us by Magna Charta, by the Habeas Corpus act, by the Bill of Rights, and above all by the Revolution, but this, "We have found monarchy, unlimited and unfettered, incompatible with rational freedom and social order; we have therefore prescribed limits to it, that you and posterity may be free and happy."

It is not necessary for me to go so far back as the Revolution for this language? it has been held in a feebler tone perhaps, certainly with less effect, within the memory of most of us. In the year 1782, the House of Commons voted "that the influence of the Crown had increased, was increasing, and ought to be diminished." Whether they followed up that vote with such restrictions as were requisite to curtail and check that increasing influence, is not now a subject of inquiry. But it affords all I want for my argument, that every complaint of unlimited power, or of limited power transgressing the limits assigned to it, every detection of the fact, and every exposure of the consequence, is consistent with the spirit of the constitution, is warranted by precedents the most approved, and is allowed by law. It is not merely allowed, it is commanded by a law that is paramount to all human law, the law written by the finger of God on the heart of man.

But why is it to be supposed that this game cock, who is described as an haughty and sanguinary tyrant, nursed from his infancy in blood and slaughter, must necessarily mean the present mild and merciful king of Great Britain? If we survey the immense continent of Asia, nay, if we confine our view to

what man can be safe, if meanings like these are to be affixed to every thing he publishes, or every thing he says?

Let us look at the language of the story, and see the meanings which are affixed by the indictment.—"You must know then, that I used, together with a variety of youthful attachments, to be very fond of birds and poultry: and among other things of this kind, I had a very fine majestic kind of animal, a game cock (meaning thereby,' says the indictment, 'to denote and represent our said lord 'the king') a haughty, sanguinary, tyrant, nursed in blood and slaughter from his infancy, fond of foreign wars and domestic rebellions, into which he would sometimes drive his subjects by his oppressive obstinacy, in hopes that he might increase his power and glory by their suppression. Now this haughty old tyrant — (again,' says the indictment, 'meaning our said lord the king')." Never, I believe, since prosecutions for libels had existence, has such an indictment, containing such innuendos as these, made its appearance in an English court of justice.

The only ground on which these innuendos can be attempted to be supported, is a ground which the prosecutors will not venture to state, a ground which they cannot state; namely, that there is so palpable a resemblance of character and conduct in this game cock to our sovereign lord the king, that that man must be blind who does not see the real object, and the true application. If the innuendos had stopped here, I should have thought this indictment by no means an innocent production. But what must I think, what must you think, when you find an innuendo in terms the most unequivocal, charging the king with being a tyrant? "Yet I had even at that time some lurking principles of aversion to barefaced despotism, struggling at my heart, which would sometimes whisper to me that the best thing one could do either for cocks and hens, or men and women was, to rid the world of tyrants— 'meaning' the indictment says, 'our said lord the king among others.'" —Which is the libel now? Not that paper published by Mr. Eaton: for if all that is charged could be substantiated, its guilt would sink into nothing in comparison with the guilt of this indictment, which contains a libel upon record, in a court of justice, that will be handed down to the latest posterity.

Gentlemen, I now come to the close of this indictment, and it is a close worthy of it. A little detached sentence of three lines is lugged in to bolster up this miserable prosecution. "Kings are wolf shepherds. Homer styles them devourers of the people, and they do not appear to have lost their original taste." To the four first words of this, "kings are wolf shepherds," the indictment has applied an innuendo, 'meaning, among others, our sovereign lord the king." Never was a proposition stated more evidently false than that a general remark must have an universal application. If I speak of kings in general, am I to be understood to speak of all kings? Certainly not. My omitting to say *all kings*, demonstrates that I mean to exclude *some;* if to exclude any, clearly to exclude those to whom the remark is no longer applicable.

The empress of Russia is the shepherdess of a vast flock; but as it was not sufficiently numerous for the exercise of her boundless philanthropy, she has lately, by a little gentle compulsion, augmented it by a considerable number of the Polish breed. She and our worthy ally the king of Prussia have gone hand in hand in this blessed work of increasing their flocks. Possibly neither you nor I should choose to call these two mornarchs, "wolf shepherds;" but I fancy we should none of us be disposed to punish very severely the man who did.

All mankind have found, by fatal experience, that kings are wolf shepherds, if they are suffered to possess unlimited power; and therefore our ancestors employed themselves very wisely in fastening limitations on their power. But it is of kings whose power is not limited that this sentence speaks. For it is illustrated by an expression of Homer's, "devourers of the people," which applies to kings whose powers are not limited as the powers of the king of Great Britain are. The king of Great Britain sustains a character totally different from that of any other king, and therefore general observations upon kings never have been, and never can be understood to apply to him. On the contrary, they necessarily exclude him. It is not long since such an application would have been considered as libellous, and I rely with confidence on the spirit and loyalty of Britons for repelling an application so unfounded, and a comparison so degrading—degrading not only to the king, but to the people. For if it were admitted that our king resembled kings in general, it would be admitted that he was a despot, from which it would follow, as a necessary consequence, that the people were slaves.

I have bestowed some pains in searching for an indictment like the present, and I can find none even in that sink of iniquity, the collection of indictments in the reign of Charles 2nd. I believe neither the records of the star chamber, nor the annals of Jefferies will furnish an indictment in which a general reflection upon the nature and tendency of tyranny, or the desert of tyrants, has been deemed a libel upon the king of Great Britain.

Gentlemen of the jury;—In every case where a charge is made, that an act has been done which the law forbids, after it has been ascertained that the act has been done, and done by the party accused, the next question is, with what intention he did the act. It is the intention which clothes the act with innocence or guilt. If you try a man for murder, you do not content yourselves with as-

sage, inserted in the indictment, by the innuendos, the true, the genuine, the necessary sense? if it is not, you must acquit him.

Thirdly, is the pamphlet, even if that sense be the proper one, a "scandalous, malicious, inflammatory, and seditious" libel? if it is not, you must acquit him.

Fourthly and lastly, did the defendant publish the pamphlet with the criminal motives and intentions imputed by this indictment? if he did not, even then you must acquit him.

Gentlemen, in saying this, I am sure I shall not be contradicted by the Bench, that a verdict of guilty must be compounded of an answer to each of those four questions in the affirmative, and that if you disbelieve any one of the imputations, nay if you doubt any one, you are bound to acquit the defendant.

It is the practice that had obtained before the passing of the libel bill, that has introduced any confusion into this plain and simple matter. Juries were directed by the judges to find the defendant guilty, if the fact of publication was proved, and they believed the meanin gassigned by the innuendos was correct, and thence juries have erroneously thought, that if the fact of publication was proved, they were bound to find the defendant guilty of publishing. Gentlemen, there is no guilt in publishing. Merely publishing a paper is in itself innocent. It is only the bad quality of the paper published, and the evil intention with which it is published, that can make a publication criminal. Therefore it is the duty of a jury, unless they are clearly convinced, not only of the fact of publication, but of the truth of the innuendos, and of the paper being a libel, and of the intention of the defendant being criminal, to pronounce him not guilty.

Gentlemen, these prosecutions are totally unlike all other prosecutions that come before you. All those indictments that you have hitherto tried, were preferred for purposes of public justice, to vindicate offended law, and punish the violation of public order and private property. These prosecutions are always brought forward to answer the interested and temporary purpose of the party in possession of power; and if it should so happen that that party, before it had attained its power, had avowed principles to which their present practices are hostile, the publication of those principles is then deemed seditious, and the publishers are prosecuted. The prosecutions of the present day, are indeed part of the ways and means of carrying on this disastrous war. They were not opened by the minister with his budget, because they are means which he has not yet the courage to avow.

I understand that the reason why Mr. Eaton is singled out and prosecuted with such unexampled severity is, that he has committed that sin which is not to be forgiven. Convinced by Mr, Pitt's speechcs, and the duke of Richmond's letters, that the political salvation of this country depends on a parliamentary reform, he has frankly declared that conviction. That has been caught up by one of these sedition hunters, who are hired to prowl about the streets, who dropped the information into the lion's mouth at the Crown and Anchor.

Gentlemen, we look back to the prosecutions for sedition in the reigns of the Stuarts with detestation and horror. Are we absolutely certain that our posterity will look back upon the prosecutions of the present day with very favourable sentiments? There was then the same cry of sedition, there was then the same pretence of conspiracies and plots, when all the time the sedition was the sedition of the ministers against the people, and the conspiracies and plots were their's, to subvert the constitutional liberty of the country. Has this prodigious dread of sedition slept from the time of Charles the 2d, until now, and is it to awake precisely at the present moment? Were libels so abundant then? Have they been so scarce from that time to this? and do they now suddenly abound again? No such thing. Publications reprobating tyranny and tyrants, and arraigning the conduct of ministers, have never failed to issue from the press. But it is not all ministers who have been troubled with the same irritability of temper, or been haunted with the same dread of a free discussion of their merits and demerits. It is a bad omen when ministers wish to stop the current of free inquiry. It is a sure sign that their conduct is such as will not stand the test of that inquiry. There have been ministers of this country who have thought a free press their best safeguard, who have feared no libels, because their conduct challenged investigation, and would pass the fiery ordeal with honour. If this is no longer the case, if the ministers of the present day dread the consequence of a rigid examination and comparison of their professions and their actions, if they wish to shut out the sun because they cannot bear the light, let them be open and honest, let them avow their meaning, let them speak out, let them not, because the great pillar that supports the British constitution is hateful to them, seek upon false pretences to level the glorious fabric with the dust.

But I am sure the lofty and intrepid spirit of Britons is not to be subdued by any such means. I am sure the means are very ill adapted to the end. Never yet was the frequency of political publications lessened by prosecution, but on the contrary they have always been increased ten-fold. If the ministers wish to extract the sting from these publications, they should adopt a system exactly the reverse of that which has provoked them. Let them not cherish every canker that has crept into the constitution, which mars its beauty, and is eating out its vitals. Let them not cling to every corruption and every abuse,

as if corruption and abuse were the end and perfection of government. Let them not pursue those measures which induce the necessity of increasing that heavy load of taxes which extorts from the poor the scanty subsistence that their labour can procure. Above all, let them not pursue those measures which deprive the industrious poor of those very means of subsistence, and throw them upon the benevolence of a generous public for their very bread. If they will avoid splitting upon these rocks, they will disarm political publications of every thing offensive, and we shall then hear no more of the prevalence of libels.

But allow me to inquire, why prosecutions are all on one side, why it is that those pamphlets only are prosecuted as libels which reflect, or are supposed to reflect, upon the regal or aristocratical branches of the constitution. Does it not hence appear that to prosecute libels upon the constitution is no part of the system of administration? For if a man will but exalt the regal and aristocratical parts of the constitution at the expense of the democratical part, he may libel the constitution with impunity. The democratical part of the constitution is not a favourite sufficient, at present, with those who have the management of affairs, to induce them to stand forward as its avengers.

The "Majesty of the Public"—Gentlemen, I am not using an expression coined by the republicans and levellers of the day, if any such there be; I am using the expression of that great lawyer, Mr. Justice Blackstone, whose authority is constantly appealed to on these occasions by the counsel for the crown —"The Majesty of the Public" may be libelled. "The Majesty of the Public" has no attorney general to file informations *ex officio* against the libeller. The sacred rights of the people may be insulted, degraded, and vilified, and no prosecution is thought of. Yet let but a sarcasm be thought to fall on the power and authority of kings or nobles, and ministerial vengeance is instantly hurled at the head of the unfortunate offender.

Gentlemen, are such prosecutions as these for calling tyranny by its name, intended to spread that torpor over the mind which is requisite to its introduction? Are they designed "to stop the current of all the passions but fear?"—Let us then resolve rather to cease to live than live in chains.

View in ancient history the glorious effect of freedom. See the heroic actions it inspired. See the consequences in the perfection of every art and science that could confer dignity on man, or contribute to his comfort. Observe the dreadful contrast that is now exhibited by those countries which have lost it. Where you saw blooming fields, stately edifices, commercial cities, you now see a desart. Where you saw a people, adorned by every manly and social excellence, whose examples we to this day hold up to our youth as objects of admiration and imitation, you now see a degenerate race of beings, possessing the form indeed, but devoid of the principles and feelings of men.

To what is it we owe the unexampled elevation which we have attained, but that transcendent freedom which has made us the envy and admiration of the world? What is it that enables North America to proceed with such gigantic strides to a state of prosperity, at which Europe will soon gaze with wonder and astonishment, but the invincible energies of freedom? What is it that renders South America such a dreadful reverse of that happy state, but the ignorance and consequent slavery in which the people are held by their unfeeling tyrants?

To attack the freedom of the press, and I conceive it is attacked most violently by this prosecution, is to aim a fatal stroke at liberty itself. And is it now at the close of the eighteenth century, in an age which boasts of being the most enlightened the world ever saw, that liberty is to be proscribed in its most favoured residence? No, gentlemen, so long as we preserve those bulwarks of our constitution the liberty of the press, and trial by jury, and juries preserve their independence, I am sure all the efforts of tyranny to obtain a footing in this island will prove abortive.

Gentlemen, this is not vain and empty declamation. The existence of every right we possess depends in the first instance upon the freedom of the press. While we possess that unimpaired, we can never be enslaved. If we lose it we cannot be free. While the press, which has been beautifully and emphatically styled "the eye of the political body," continues to inspect and watch with diligence the administration of public affairs, some hope remains that those affairs may be administered with some attention to the public interest. But if it is destroyed or constantly harrassed in the performance of its necessary functions, we may abandon ourselves to despondency and despair.

Gentlemen, if you find the defendant guilty, consider what you determine, under the awful sanction of an attestation of the Supreme Being. You swear to the truth of every word and syllable in this indictment. You swear that by this game cock, this haughty and sanguinary tyrant, nursed from his infancy in blood and slaughter, is meant the king of Great Britain, and no other. You swear too that that king is a tyrant (for so the indictment charges him to be). You swear that an observation on kings in general must necessarily include him. Besides that, you not only swear that you so understand all this, but that so did the defendant mean.

Can you lay your hands upon your hearts, and swear all this? Can you lie down upon your pillows without feeling thorns in the reflection, that that man who has already been imprisoned near three months upon this indictment, is to be imprisoned two or three

years longer, and his wife and children reduced to beggary and want, because you have fancied that a sense *primâ facie* so foreign, may possibly belong to this paper?

Why is it, that that institution, trial by jury, has challenged such universal admiration? Because men are called upon to try others by the same law by which they may themselves be tried, and therefore it is concluded that no man would be so mad or so wicked as to wrest the law either for acquittal or conviction; because in the former case he would suffer as a member of that political society which cannot exist if its laws are not enforced; in the latter case he would be exposed to the hazard of suffering as an individual, and becoming the victim of his own guilt.

Where that man stands to-day, you yourselves may stand to-morrow. For there is not a word you utter, which may not be tortured into sedition, with as much reason as the paper now under your consideration.

In pronouncing your verdict upon this case, you will recollect that ever applicable precept of the great Author of our religion,—"Do unto others as you would wish them to do unto you." Sitting in the judgment seat, you will mete out to the defendant the same measure of justice which you would think he ought to mete out to you, were you in his situation and he in yours. If you were standing at that bar, accused of having uttered general expressions, prompted by the generous feelings of your hearts, in detestation of tyranny and tyrants, to which the despotic ingenuity of a special pleader had affixed a seditious meaning by such innuendos as appear upon this indictment, would you not claim as a first principle of justice that your words should be taken in the most favourable sense, and not be perverted from their primary meaning, for the purpose of incarcerating you in that strong mansion? I am sure you would, and therefore I claim the same justice for the defendant. I claim it of you, because the verdict must be yours, and yours alone, as you will answer it to your country, to your consciences and your God.

Gentlemen, I have endeavoured to discharge my duty. I fear I have done it feebly and imperfectly. You will nevertheless do your's, and I am confident you will add to the number of shining instances we have lately witnessed, that an innocent individual is never more safe than when his conduct is submitted to the enlightened and impartial judgment of an English jury.

SUMMING UP.

Mr. *Recorder*.—Gentlemen of the jury, this is an indictment against Daniel Isaac Eaton, who is charged with having published this libel.—It cannot be necessary for me to state the charge, you have heard it opened by the learned counsel for the prosecution, and you have afterwards heard those parts which are offensive, and which charge sedition upon the prisoner, particularly stated and read to you. The pamphlet has been produced, and it will be put into your hands; therefore it would be a mere waste of time for me to run over the words of the charge; I shall take for granted that you are perfectly masters of them; and being so, the first part of my duty I conceive to be, to state to you what is the evidence in support of this prosecution; and when I have done that, I shall state more particularly what I conceive to be the gist of the crime.

To prove the publication, they only call one witness;—he says he bought it at the shop which is kept by the defendant, in Bishopsgate-street, on the 18th of November;—it is Number 8.—Upon the cross-examination, he says, he is not an informer, but a man who lives by carrying about newspapers. This is the whole evidence of the publication.

Before I state to you the question of publication, for of that you must be satisfied upon the evidence, I will state what I conceive to be particularly the nature of the crime, the nature of the sedition, imputed to the prisoner.—It is, as charged in the indictment, that of vilifying and traducing the king and the regal office, as established by law.

Now as to the first, traducing the king, the last count in the indictment seems to apply particularly to that; the part I allude to is this:—"Kings are wolf shepherds;—Homer styles them devourers of the people; and they do not appear to have lost their original taste."

Now, gentlemen, as to this part of the question, by the constitution of this country, and by the settled law of this country, to write any thing positively and decidedly disrespectful, to vilify or traduce, to render ignoble, or disgrace in the eyes of the people, who are governed, the first branch of the legislature, the king, is, by the law of the land, an offence, and this is the offence imputed to the prisoner. The sort of sedition imputed to him is, that he endeavoured thereby to weaken the hands of government.

You know very well, gentlemen, that this constitution is formed of king, lords, and commons; and it is very necessary, the law has considered it such, and wisdom and policy require that it should be so, that every branch of the legislature should be held in equal respect. I have no doubt to state to you, that in a state of civil society, where there exists a government, there must be superiority and inferiority; it is for the advantage and the good of the whole that it should exist; and it is for that reason that the constitution and the law of this country have fortified and given a particular and strong protection to the character which commands as the chief magistrate, and controls those who are governed in this country. I do not en-

large upon this subject, because I am sure the learned advocate for the defendant cannot controvert this;—that being so, you will be to judge whether, upon the reading this pamphlet, which you ought, in my opinion, to read, with your minds not at all heated, either with the address of the counsel on the part of the prosecution, or with the address of the counsel on the part of the defendant, but you should read the book precisely in the way as if you had it in your own private chamber, and wished to make yourselves completely masters of the whole subject: see what the impression on your minds is then, and see whether a person. using the language which is used in this second count, does or does not mean to vilify and traduce that branch of the constitution which the defendant is charged with doing in the indictment.

You are not only to read the passages charged to be libellous, but to read the whole pamphlet; and if, upon reading the whole, you can apply this to any thing but the government of this country, and that branch of it named—to be sure it does not impute any thing to the defendant.

An observation occurred to the counsel for the defendant, which he urged with great ingenuity; he thought it his duty to state to you, that this has so general an application, that it is not to be applied to the government of this country.—Now you should read a pamphlet of this sort, charged to be a libel, with exactly the same indifference as you would any other book,—then see how you are to apply that language in the way it is here stated—"The Reflexions of a true Briton—Kings are wolf shepherds," and so on—whether you would not apply that to all kings?

The learned counsel has told you, that the word "*all*," should have been used for you to have put that construction upon it;—now that is entirely a matter of fact upon which you are to decide; but the observation really strikes me the other way; because it strikes me, that if a person uses the general term in that way, and makes no exception, that it is applicable to all persons of that description. It appears therefore to me, and you will judge of that, reading this with the whole of the pamphlet, whether you do not consider this as a direct attack upon one branch of the legislature, and that the person who wrote this (I shall come to the publisher by-and-by), did not thereby mean to say that kings, this description of people, were devourers of the people, and so on;—whether, being in that general way, it is not, in the common construction of language, to be applied to the government of this country? If you think it is, then it is, by the law of the land, indisputably a libel; and how far the prisoner may be answerable for it, it is for you to consider. I shall make one more observation to you upon this part of the case, that it is your duty certainly to read the whole pamphlet, because the innuendos, the sense that is imputed to the person who writes this book, is entirely to be decided by you. So much for that part of the case which imputes sedition to the government of this country.

It appears to me that sedition is imputed in another way, and that is upon the personal executive power, upon the king himself. This indictment charges the author of this pamphlet with charging the king of England, among others, with being a tyrant; and after stating that such a tyrant is guilty of oppression by taxation, and so on, he seems to intimate pretty broadly as his opinion, that such a person should suffer death by the guillotine.—And he says afterwards, describing all this by the figure of a cock, that such a person, when his trappings were stripped off, was found to be rank with the pollution of his luxurious vices, and so on. The second count only makes a part of the same charge; it will be for you to consider, reading the book in an indifferent manner; for there is no evidence given in explanation of the book one way or other; you have nothing but the speeches of the learned counsel upon it. As to what passes in the world, you are competent and fair judges Then reading this book, called Politics for the People, and the Reflexions of a True Briton, and so on, considering the time when it was published, you will be to decide upon all the observations you have heard on both sides, whether this is fairly or not imputable, as it is charged in this indictment, to the king of this country, and whether the author who wrote it, meant to apply it to the king of this country.

With respect to innuendos, it must be a fact always for a jury to decide what is the sense and meaning of a libel; for man in the highest extravagance of compliment, beyond a doubt may write such a pamphlet as shall be a gross libel. A man may use such language, as in the plain terms of it at first may appear to be no libel; but yet, perhaps, by looking into some other expression, or taking the intention of the party in the whole of the book, it will be impossible not to see, that though he uses language that is ironical, yet that you perfectly understand, he means exactly the reverse of what he says; and if from the whole of the work you can collect, and think yourselves bound to collect, reading it fairly, that such was the intention of the party, that will be a libel.

Gentlemen, it is in matters of sedition as it is in other crimes. Few men are bold and hardy enough to use language of such sort as will subject them to very severe penalties, without some sort of cover. God forbid that I should (for it is not my province) impute that to the defendant upon the present occasion; but it is my duty to state to you, that if a pamphlet is written in that way, you have a right to take off the mask, if you think it is a mask; and it is your duty, reading it with indifference and with temper, to see what the intention is, whatever the veil may

be, whatever the cover may be, whether it is under an ape, or whether it is by allegory, or a figure; whatever colour or complexion the book may take, it is intirely for you to decide what is the fair meaning of that book, and what is the sense in which the author wrote it.

Gentlemen; you see here is a figurative description of a cock, and so on; and this is imputed by the indictment to apply to the sovereign of this country, and to impute to him taxation, and other things, as oppression; and that he ought to be taken off by the guillotine.—Upon the observation made on both sides of the question, and considering that the book is entitled "Politics for the People," and "The Reflexions of a True Briton," you will be to judge whether that is fairly imputable to the sovereign of this country; if it is not, certainly it is not a libel; if it is, on the other hand, it is indisputably a libel, and you will find the defendant guilty of that count.

Gentlemen, you have heard a great many observations in this case respecting the liberty of the press. I am sure I think it my duty to state, that the liberty of the press is the greatest blessing this country can enjoy; but on the other hand, I must state to you, that the licentiousness of the press is the greatest curse. And I am sure your good sense will teach you this, that if men are permitted to say any thing, they will very soon go the length of doing any thing; and where that is the situation of affairs in any country, there is an end of all government; and therefore you must judge in a case of this sort of the sense of the libel, of the intention of the party, and your decision on this indictment one way or other will not, in my opinion, affect that question which has been stated to you of the liberty of the press.

This, you see, is not charged to be a libel upon ministers, but it is a direct charge, in one part of it, upon one branch of the government; and, in another part of it, in an oppressive exercise of the duties of that branch of the government; and therefore if it fairly applies to the king of this country, it seems to me very difficult for any jury to say, that a person who writes a book with an intention to make a direct attack upon the government, or to charge the executive government of this country with oppression, it seems very difficult to say that that comes within the liberty of the press. I conceive the law to be completely otherwise, and that the executive government of the country is protected by the law, that every individual is protected from such an attack, and the executive government of a country, the first magistrate, a character that stands so high, must necessarily be so protected; therefore it comes, and always must come to the question, whether a direct offensive attack is made upon that government.

If you shall be of opinion that this is not written in a mere speculative way, but that it is written with the intention charged in the indictment, to render contemptible that character, and to charge that character with oppression, it seems to me that this is no question of speculation which involves the liberty of the press, but it seems to be that sort of question which gives the go-by to it; and that you must be decided intirely in your opinion upon the evidence which is before you.

Gentlemen, much has been said about the cheapness of the libel; that is out of the question; if you should be satisfied upon the whole, that it is a libel applied to the government of this country, it must be certainly an aggravation of the offence, but that cannot decide the question of libel one way or the other. But then there is another question for your consideration, and that is the intention of the party. Now you will observe the person before you is the publisher, and not the author of the libel; but as to the question of the sedition in the libel, that must first be disposed of; and it is my duty to state to you, that if you should think this applicable to the government of this country, that then the publisher of it, if it is a libel, is answerable for the consequences of that publication; and it will be very difficult, in my opinion, for you to say, when once the fact is settled, that the work is libellous, that the person who sends into the world that sort of publication to disturb the peace of the country, could do it with any very good intention.

The learned counsel for the defendant has told you, that since the act of parliament has taken place, this is to be decided in the same way as any other crime, and he has thought fit to put the crime of murder as the example. Now taking that as the example, how would it be? Suppose a man commits a murder with a very offensive weapon, I take it to be clear and settled law that his evil intent will thereby be presumed; and if the law in the case where a murder is committed with a very offensive weapon, would presume that the party using it had an intention to do the mischief, I should think, if a man sends poison into the world, that may do a great deal of mischief, that a jury would not go any great length in presuming upon the evidence, unless he could, on his part, show some evidence to get rid of the presumption, that he was influenced by that criminal intention which the law presumes, in that case, as it does in the case of libel.

It will be for you, therefore, first to make up your minds upon this pamphlet, whether it does apply to the king and the government of this country; and if it does, then the next question for you to consider is, whether the prisoner is the publisher of it; now as to that he certainly is answerable in law as the publisher, if it is sold in his shop. There has been nothing proved on the part of the prisoner to show that he is not at all responsible for it; and unless he disproves the fact of publication, it is a publication for which he is

bound to answer; and as to his intention, I shall certainly leave it to you to determine upon the case stated by the counsel, if you are satisfied that this is a libellous work, and if you are satisfied that these innuendos are proper innuendos, and fairly made out, whether you can think a man publishing such a pamphlet as this charged to have, and having in your opinion a seditious tendency, does it with such an innocent intention as the law will support.

There is one more observation that has been made by the counsel for the defendant.—You have heard a good deal about the star-chamber, and so on; now I think it is but fair to say that this has been brought before you by a grand jury. God forbid that you should decide the question against the prisoner because a grand jury has found the bill; but so far as concerns the attorney general, it is on the part of the public certainly the mildest method of proceeding, because it is giving the prisoner the most favourable opportunity of being tried by his equals. I cannot, therefore, conceive that this prosecution can in any way be considered to look at all like any of those prosecutions of which we have heard so much, because I think all that is done away by the manner in which the present attorney general has thought fit to prosecute this man.

There was another observation made by the counsel for the defendant, respecting the taxes and administration, and so on. I can only say, that I think that observation was a little unfortunate, because the whole of the defence seemed to me, upon this occasion, to turn upon this; and it is the strongest part of the argument which has been put by the counsel for the defendant, that these innuendos, applying these passages to the king and government of this country, are not fairly applied. Now it seems to me, in such a defence as that, rather an aukward circumstance; and it looks as if the mind, in reading this pamphlet, could not but feel that it is meant to convey sentiments unfavourable to the government of this country; and what strengthens that opinion is, that in the subsequent part something farther is stated respecting those taxes mentioned in this very libel.

You have had another observation made with respect to the state of this man's family; now as all that is to be considered as an attack upon your passions, either on one side or the other, you have too much good sense to attend to it. You are to consider the situation of the country at large, the good government of the country on one hand, and the situation of the defendant on the other, and I have no doubt that you will do justice between them both, and that you will not be hurried away by the idea of a family, or any thing of that sort, which in a criminal case can make no consideration at all. All that the prosecutor can ask of you, and all that I can ask of you, is this, to read this book as you would read it if you wanted to make yourselves masters of it in your own private chambers, see what the impression is on your minds, and if you think these innuendos are fairly made out, as applied to this pamphlet, they certainly charge the defendant with publishing a seditious libel. You will judge of the whole; if you think him guilty you will find him so; if you think this is not made out to be applicable to the king and government of this country, you will then acquit him.

Mr. *Gurney*.—I beg the jury may take out with them a copy of the indictment as well as the pamphlet.

Mr. *Fielding*.—Your lordship will decide upon that.

Mr. *Gurney*.—Upon the trial of this defendant at Guildhall, lord Kenyon expressly desired the jury to take with them a copy of the information.

Foreman of the Jury.—We beg we may have a copy of the indictment.

Mr. *Fielding*.—Certainly gentlemen you shall.

The jury retired, taking with them the pamphlet and a copy of the indictment; in about an hour they returned with a verdict of—Not-Guilty.

601. Proceedings on the Trial of an Indictment against THOMAS WALKER of Manchester, Merchant, WILLIAM PAUL, SAMUEL JACKSON, JAMES CHEETHAM, OLIVER PEARSALL, BENJAMIN BOOTH, and JOSEPH COLLIER, for a Conspiracy to overthrow the Constitution and Government, and to Aid and Assist the French (being the King's Enemies), in case they should invade this Kingdom. Tried at Lancaster, before the Hon. John Heath, Esq. one of the Justices of his Majesty's Court of Common Pleas,* April 2: 34 GEORGE III. A. D. 1794.

Copy of the Indictment against Thomas Walker and others.

Lancashire } THE jurors for our lord the king
to wit } upon their oath present, that Thomas Walker,† late of Manchester, in the county of Lancaster, merchant; George M'Cullum, late of the same place, labourer;

* Taken in short-hand by Joseph Gurney.

† There was a warrant on a charge of high treason issued against, but not executed upon, this defendant: as to the proceedings upon which, the following documents were inserted in the original edition of this trial:

No. I.—Copy of Mr. WALKER'S first letter to Mr. Secretary DUNDAS.

Bate's Hotel, 17th June, 1793.

Sir;—I have been for some time absent from home, on account of business which has required my presence in London. I find by my letters of last Saturday (the contents of which are still more strongly confirmed by those of to-day), that a report has been industriously circulated in Manchester of a charge of high treason, made against me, before the magistrates of that town.

I am extremely sorry to occupy your time with the frivolous rumours that idle and ignorant, or bigotted and malevolent people, may amuse themselves with propagating at the expense of my character. But the report above mentioned is in itself so serious, and has been the topic of so much conversation at Manchester, that I think it right, in justice to myself, and to obviate any false construction which my enemies may put upon my absence from home, to inform you, sir, that my residence is as above-mentioned, and that I shall be not merely ready and willing, but desirous to meet any charge that may be made against me from whatever quarter it may proceed. I shall be upon change at the usual time almost every day this week, and I shall be this evening in the lobby of the House of Commons, or in the gallery there. —I have the honour to be, sir, your most obedient servant,

(Signed) THOMAS WALKER.

The right honble. *Henry Dundas,*
principal secretary of state for
the home department, &c. &c.

No. II.—Copy of Mr. WALKER'S second letter to Mr. Secretary DUNDAS.

Bate's Hotel, 22nd June, 1793.

Sir;—In consequence of repeated advice from Manchester of warrants for high treason having been issued against me, I thought it right to inform you by letter on Monday last, that I resided, during my stay in town, at Bate's hotel, and that I should be at the House of Commons on that evening, and on change at the usual hours almost every day of the week. I have kept my promise.

I confess I am somewhst surprised, under all the circumstances of my situation, that I have not been favoured with an answer to that letter, but had the business rested there, I should probably have troubled you no farther.

By a letter, however, from my attorney in Manchester, sent yesterday under cover to a friend of mine, I learn officially that a warrant upon a charge of high treason has certainly been issued against me at Manchester, and I have every reason to suppose (if my information be true) that the intent of the charge in the first instance, and the subsequent delay in proceeding upon it, is not to punish me for a political offence, of which I know I am not guilty, but to injure my general character and reputation; indirectly indeed, but irrevocably.

The character and credit of a commercial man, sir, is too delicate to be trifled with. Hitherto mine has been unsullied; and I trust it will remain so by any conduct of my own. But the principle of harassing a British merchant by vague reports, industriously circulated, of crimes he has never committed; by charges unfounded, and threats unexecuted, is so base, so detestably malignant, that I hope, for the honour of the national character, it is confined to my enemies at Manchester.

It is highly improbable that any charge of so criminal a nature can have been made against me, without its being known at the office of his majesty's secretary of state. I

John Smith, late of the same place, labourer; William Paul,† late of the same place, paperstainer; Samuel Jackson,‡ late of the same place, chapman; James Cheetham,|| late of

do, therefore, earnestly intreat, that I may be kept no longer in suspense; that I may be treated forthwith according to law, if there be any legal accusation against me, or if there be none, that I may be informed of it without delay. I think I have a right, after what has passed, to require, as an act of common justice, that my mind may be set at ease, and that I may be enabled to attend to my commercial concerns, without the perpetual anxiety attendant upon reports and suspicions most injurious and unfounded.

Mr. Wharton will do me the favour to deliver this, and wait for an answer.*—In the mean time I am, sir, your obedient servant,

(Signed) THOMAS WALKER.

The right honble. *Henry Dundas*,
his majesty's principal secretary
of state for the home department, &c. &c.

No. III.—Copy of a letter from Mr. WALKER to Mr. WHARTON.

Bate's Hotel, London, 16th July, 1793.

Dear Sir; I have no doubt you will be much surprised, when I inform you, that I am still without any answer to the letter you did me the honor to take to Mr. Dundas (as secretary of state for the home department) upon the 22d ult. and several of my friends, being not less surprised than myself at the silence of Mr. Dundas, are anxious to know what passed between you and him upon the delivery of my letter. I shall, therefore, consider myself particularly obliged, if you will favour me, as nearly as you can recollect, with the substance of the conversation which took place on that occasion.—With much respect and esteem believe me, dear sir, very sincerely your's,

(Signed) THOMAS WALKER.

John Wharton, esq. M. P. Skelton Castle, near Guisborough, Yorkshire.

No. IV.—Copy of Mr. WHARTON's Answer to Mr. WALKER.

Dr. Sir; I am much surprised to find that you have not yet heard from the secretary of state's office in reply to the letter I delivered from you to Mr. Dundas, on the 22d ult. The conversation that passed between us on that occasion, you desire that I should repeat to you; it is impossible for me to undertake to do it verbatim; but the substance was, that I presented the letter at your request, in consequence of your not having received any reply to one of a similar purport, that you had written to him on the preceding Monday;

and that being kept in a state of suspense on a subject of so serious a nature, was highly injurious to you as an Englishman and a merchant.—Mr. Dundas read the letter, and said that it was impossible for him to make any other reply to it than this, that he had received serious and criminal charges against you; that he had consequently taken such steps as his official duty required, to have those charges investigated, and that I might assure you, that no official delay should arise, and that when any determination was taken respecting them, you should be apprized of it. I said you wished for nothing more than a speedy determination on the steps to be taken, and that you did not wish to escape the justice of your country, if you had offended it; and I added that you had accompanied me to his office, and that I was ready to deliver up the culprit, if he considered you as such, immediately; but I apprehended that upon a full investigation of the charges against you, it would appear that personal enmity to you, and jealousy of your commercial connexions, had instigated persons who had failed in their attempts to injure you commercially, to make this attempt to take away your life; Mr. Dundas said it was very possible that there might be low and personal motives for the prosecution, and that he (from every thing he had heretofore heard or known of you) had too good an opinion of your understanding, to suppose you would subject yourself to the penalties of high treason. I then thanked him for his candour and politeness, and took my leave.

I shall be very happy to hear from you, if any thing further is done in this business, and remain, dear sir, with great regard, your's, very sincerely,

(Signed) JOHN WHARTON.

Skelton Castle, July 21st, 1793.

Thomas Walker, esq. Bate's Hotel, Adelphi, London.

No. V.—Copy of a third Letter from Mr. WALKER, to Mr. Secretary DUNDAS.

Bate's Hotel, 29th July, 1793.

Sir; from Mr. Wharton's account of the conversation that passed between you and him, on his delivering to you my letter of the 22d ult. I was induced to expect an early intimation of the intended proceedings against me, or of their having been relinquished; I should be much surprised that no decision had yet taken place on this business, if I were not conscious that the more strictly the accusations were investigated, the more futile they would appear.

My business in London, will occupy me till Sunday next, when I shall set out for Lancashire, unless some notice from the office of his majesty's secretaries of state should detain

* While Mr. Wharton went into Mr. Dundas, Mr. Walker, and Mr. Cooper as his friend, waited near the door of the board of control, till Mr. Wharton came out.—*Orig. Ed.*

Salford, in the said county, labourer; Oliver Pearson,§ late of Manchester aforesaid, labourer; Benjamin Booth,¶ late of the same place, labourer; Henry York, late of the same

me longer in town.—I have the honor to be, sir, your most obedient servant,

(Signed) THOMAS WALKER.

The right honble. *Henry Dundas,*
his Majesty's Principal Secretary
of State for the Home Department, &c. &c.

Mr. Walker not having received an answer from Mr. Dundas to any of his three letters, and judging that Mr. Dundas's testimony might be essential, directed him to be subpœnaed to appear as a witness on this trial at Lancaster. The following are copies of two subpœnas with which Mr. Dundas was served, together with the copies of two letters, the one from Messrs. Ward, Dennetts and Greaves, agents to Messrs. Duckworth and Dennett, and the other from Mr. White, solicitor to the treasury, to Messrs. Ward, Dennetts and Greaves, upon this subject.

No. VI.—Copy of the first Subpœna with which Mr. DUNDAS was served.

George the third, by the grace of God, of Great Britain, France, and Ireland king, defender of the faith, &c. to the right honourable Henry Dundas, our principal secretary of state for the home department, greeting, we command you, that laying aside all other business, excuses, and delays whatsoever, you be and personally appear before our justices at Lancaster, the first day of the next general session of assizes of oyer and terminer, and general gaol delivery, there to be holden, to testify and speak the truth between us and Thomas Walker, George M'Cullum, John Smith, William Paul, Samuel Jackson, James Cheetham, Oliver Pearson, Benjamin Booth, Henry Yorke, and Joseph Collier, on the part and behalf of the said Thomas, George, John, William, Samuel, James, Oliver, Benjamin, Henry, and Joseph, upon all such matters and things whereupon you shall be examined; and that you bring with you and produce upon the said trial, three several letters, purporting to be written by the said Thomas Walker to you, one of which is dated in the words and figures following, "Bate's Hotel, 17th June, 1793," and is signed and subscribed with the name "Thomas Walker," and is directed to you by the description of the right honble. Henry Dundas, principal secretary of state for the home department, &c. another of which said letters is dated in the words and figures following, "Bate's Hotel, 22d June 1793," and is signed and subscribed with the name "Thomas Walker," and is directed to you by the description of "the right honble. Henry Dundas, his majesty's principal secretary of state for the home department, &c. &c." and the other of which said letters is dated in the words and figures following, "Bate's Hotel, 29th July 1793," and is signed and subscribed with the name "Thomas Walker," and is directed to you by the description of "the right honble. Henry Dundas, his majesty's principal secretary of state for the home department, &c. &c." And this you are not to omit, under the penalty of one hundred pounds. Witness, sir Archibald Macdonald, knight, at Lancaster, the fifteenth day of August, in the thirty-third year of our reign.

BATT.

(Endorsed)

March 24th. 1794.—Served this subpœna on Mr. Dundas, at his house at Wimbledon, and at the same time offered him thirty guineas, which he refused.

(Signed) J. DENNETT.

No. VII.—Copy of the second Subpœna with which Mr. DUNDAS was served.

George the third, by the grace of God, of Great Britain, France, and Ireland king, defender of the faith, &c. To the right honble. Henry Dundas, our principal secretary of state of the home department, greeting, we command you, that laying aside all other business, excuses, and delays whatsoever, you be and personally appear before our justices at Lancaster, the first day of the next general session of assizes of oyer and terminer, and general gaol delivery there to be holden, to testify and speak the truth between us and Thomas Walker, George M'Cullum, John Smith, William Paul, Samuel Jackson, James Cheetham, Oliver Pearson, Benjamin Booth, Henry Yorke, and Joseph Collier, on the part and behalf of the said Thomas, George, John, William, Samuel, James, Oliver, Benjamin, Henry, and Joseph, upon all such matters and things whereupon you shall be examined; And also that you bring with you and produce upon the trial of this traverse, all informations and examinations, and copies of informations and examinations, taken on oath or otherwise, of Thomas Dunn, or any other person or persons against the said defendants, or any of them, either for high treason, conspiracy, or any other crime or misdemeanor, transmitted and delivered to you, either as the secretary of state, or otherwise, and all warrants, or copies of warrants issued thereon, and all other proceedings had and taken thereon.—And this you are not to omit under the penalty of one hundred pounds. Witness, sir Archibald Macdonald, knight, at Lancaster, the fifteenth day of August, in the thirty-third year of our reign.

BATT.

(Endorsed.)

March 25th, 1794.—Served this subpœna, by delivering copy to Mr. Nepean, who undertook to accept it as if served on Mr. Dundas.

(Signed) J. DENNETT.

constitution and government of this kingdom, as by law established, and unlawfully contriving and intending, as much as in them lay, to break the peace and disturb the tranquillity

The rev. Mr. Griffith said, "that so far from his acting in London, was he there, and had a sufficient acquaintance with Mr. Thomas Walker, he should not think it unjustifiable or improper to call on him at his own hotel, and dine with him." On which Mr. Seddon said, "What! dine with a traitor!" and I added, "and one against whom you yourself have issued a warrant for his apprehension!" he replied, "I mean as a private gentleman;" we both repeated "would you dine with a traitor?"

Mr. Griffith then said, it was not incumbent on him to take any steps to apprehend Mr. Thomas Walker out of his own neighbourhood, on which Mr. Seddon observed, that the warrant being for conspiring or compassing the death of the king, as he (Mr. Griffith) had acknowledged, and Mr. Thomas Walker being in London so near the king's person, he might more easily have an opportunity of putting his wicked intentions into execution, but that a traitor ought to be taken into custody wherever he was, as soon as possible; and I said it showed little regard for the safety of the king's person, to suffer those who were accused of conspiring against his life, to be at large so near him without interruption.

The rev. Mr. Griffith also declared, that Unite had followed Mrs. Jackson's funeral to have apprehended Mr. Jackson, had he followed her to the grave; that he wished Unite not to interrupt the ceremony, as he thought it would be rather indelicate, but to follow Mr. Jackson, and take him up as he returned home, or at his own house. Mr. Griffith also said, he was persuaded that treason had been actually committed at Mr. Walker's house, but that Mr. Walker was not present at the time. I replied, that was not the fact, for neither my brother nor I, had any connexion with people guilty of treason. Mr. Griffith said it had been reported he had an indemnity from government for what he had done, but that was not the case.

Mr. Seddon mentioned Mr. Paul's treatment, and Mr. Griffith's having refused a copy of the information, and the reports which had been so shamefully spread, respecting different people being apprehended here for high treason, and that the matter ought certainly to be brought to a conclusion. After repeating the general purport of the paper alluded to, and Mr. Griffith again declaring that he should give the card to Unite, who might act as he thought proper, we left him.

I again went on the 31st of July with Mr. Birch and Mr. Sanderson, to Mr. Griffith and gave him notice in their presence that my brother would be at Lancaster at the ensuing assizes.

On the 5th of August I again informed Mr. Griffith, that my brother would be in Manchester on the Thursday or Friday following; Mr. Griffith asked where he would be, to which I replied, that I could not tell precisely where he would be, but that he would be in Manchester; Mr. Griffith said, "Will he be upon change?" I said, "Why should he be upon change? he will be in Manchester." Mr. Griffith further asked, "Will your brother pledge himself to take his trial for sedition at the ensuing assizes? for I have two charges against him, one for high treason, and another for sedition." I replied "he will be in Manchester at the time I mention, on Thursday or Friday next."

On Thursday my brother returned from London to Barlow, and on Friday morning he came to Manchester, of which I gave Mr. Griffith immediate notice.

RICHARD WALKER.

No. XI.—Copy of the paper read by Mr. RICHARD WALKER, to the rev. JOHN GRIFFITH, upon the 18th of July 1793, in the presence of Mr. WILLIAM SEDDON.

I understand from the information of several respectable persons, that there is a warrant out against my brother Mr. Thomas Walker, signed by you, on a criminal charge of some kind or other; my brother has received the same information: as this report is now generally current in Manchester, I think it right to acquaint you, that my brother Mr. Thoms Walker, resides at present at Bate's hotel, in the Adelphi, London; that his business will detain him in London some time; that he wishes himself, and I wish on his account, that no uncertainty respecting the place of his abode, may delay the course of justice; and therefore if there be any warrant against him, you may have the opportunity of getting it properly backed, and served upon him without delay, as he will certainly remain in London a sufficient length of time to enable this to be done. He is generally upon the Royal Exchange every day at the usual hours.

If there be no charge against my brother, I think I have a right to call upon you to say so, as my commercial reputation is involved, as well as his, in the present reports against him. That you may not possibly make any mistake, I give you this card, with his address in his own hand writing.

(Copy of the Card).

Mr. Walker,
of Manchester,
Bate's Hotel,
Adelphi,
London.

18 July, 1793,
about 11 o'clock,
A. M.

† There was a warrant for high treason executed upon this defendant, as to which the following articles were inserted in the ap-

of this kingdom, did, on the first day of November in the thirty-third year of the reign of our said present sovereign lord the now king, and on divers other days and times between

pendix to the original edition of this case:—

William Paul is a paper-stainer in Manchester. On the 14th of June 1793, he was torn from his wife and family, in consequence of a warrant signed by the rev. John Griffith, charging him with high treason, "by compassing the death of his present majesty," on the sole oath of Thomas Dunn. Mr. Paul was that day and night confined in an apartment belonging to the New Bailey prison; the next morning he was committed to that prison, and orders were given to treat him as a common felon. Upon the 17th of the same month, a commitment was made out for him to the castle of Lancaster; but some days being allowed him to settle his books, &c. he was not sent there until the 23rd, when he was taken out of his cell at one o'clock in the morning, without any previous notice.

Mr. Paul remained in the county gaol at Lancaster, till the ensuing assizes in August, when no indictment for high treason being preferred against him, he was discharged. Many of Mr. Paul's friends were ready to have given bail; but as in cases of treason, no bail can be taken, it is hardly necessary to observe, that by these means a man may be confined from the close of one assizes to the commencement of another, on an accusation of this crime; and although it requires two witnesses to convict a man, one only is sufficient to have him committed.

Mr. Paul being indicted at the August assizes, for a conspiracy with Mr. Thomas Walker and others, he was held to bail with the other defendants, and with them honourably acquitted in April last.

During the time which Mr. Paul continued in the New Bailey prison, neither his wife nor his children were permitted to see him, without some of the keepers being present; and he was forced to sleep in one of the cells of the felons, which having been fresh washed, there being no glass in the windows, and the window shutter much broken, gave Mr. Paul a cold, which afterwards terminated in a violent inflammation in his eyes, one of which he was in the greatest danger of loosing; he was confined to his bed for three weeks, and to his room for near three months.

This defendant has a wife and four children.

Copy of the warrant by which MR. PAUL was apprehended.

Lancashire, to wit. To the constables of the township of Manchester, in the said county, and to each and every of them.

You are hereby required, in his majesty's name, to apprehend and bring before me John Griffith, clerk, one of his majesty's justices of the peace in and for the said county, William Paul, of Manchester, in the said county, paper-stainer, to answer to such matters as are and shall be objected against him, for having committed high treason in the township of Manchester aforesaid, by compassing the death of his present majesty. And also for divers contempts against our said lord the king. Given under my hand and seal, the 13th day of June, one thousand seven hundred and ninety-three.

(L. S.) JOHN GRIFFITH.

Copy of Mr. PAUL'S commitment to Lancaster.

Lancashire, to wit. To the constables of the township of Manchester, and also to the gaoler, or keeper of his majesty's gaol, the castle of Lancaster, in the said county:

These are in his majesty's name to require and command you the said constables, to convey the body of William Paul, of Manchester, in the said county, paper-stainer, to his majesty's gaol the castle of Lancaster, and him there to deliver to the gaoler or keeper thereof. He, the said William Paul, being charged before me on the oath of Thomas Dunn, with having committed high treason, by compassing the death of the present king, at the township of Manchester aforesaid. And you the said gaoler, or keeper of the said gaol, are hereby required to receive into your custody in the said gaol, the said William Paul, and him there safely keep until he shall be thence discharged by due course of law. Given under my hand and seal, at the township of Manchester aforesaid, the seventeenth day of June, one thousand seven hundred and ninety-three.

(L. S.) JOHN GRIFFITH.

‡ There appears to have been a warrant for high treason against this defendant issued, but not executed:—this warrant, as well as those before-mentioned, was issued by the rev. John Griffith, one of his majesty's justices of the peace (at that time one of the chaplains to the collegiate church in Manchester, since elected a fellow thereof) upon the sole information of Thomas Dunn, and for the same accusations which are charged in this indictment as a conspiracy.

In the appendix to original edition the following article was inserted:—

Samuel Jackson.—This defendant being informed that a warrant for high treason was issued against him, as well as against Mr. Walker and Mr. Paul, remained with his family, who were then in the country about five miles from Manchester, on account of the dangerous state of health of his wife, and whose death was greatly accelerated by her anxiety on this occasion. He, however, immediately on receiving the information, desired his solicitors, Messrs. Duckworth and Dennett, to give notice to the rev. John

that day and the twelfth day of June then next following, with force and arms at Manchester aforesaid, in the county of Lancaster aforesaid, unlawfully, maliciously, and sedi-

Griffith, the magistrate who was said to have issued the warrant, and to his clerk, and also to the agents to the solicitor for the prosecution, that if the warrant was for a bailable offence, he would instantly give bail, or if not, he would appear to meet the charge at the assizes; which notice was accordingly given, and his solicitors were informed that the charge was for high treason.

After the death of Mrs. Jackson (in the beginning of July), at whose funeral in Manchester, the deputy constable attended by order of the above magistrate, for the purpose of apprehending Mr. Jackson, he still remained in the country, though going about publicly, visited by his friends from Manchester, and the place of his residence known to Mr. Griffith.

On the 19th of July, his solicitors gave written notices to the rev. John Griffith, and his clerk, and also to the agents to the solicitor for the prosecution, that this defendant would attend at the following assizes, to meet any charge that might be brought against him; and on the 7th of August his brother gave another notice in writing to Mr. Griffith to inform him, that he (the defendant) would be in Manchester the next day, and the day following.—On the 8th of August, Mr. Jackson came to Manchester, and the next day sent a message to the magistrate, to let him know where he was; but not being apprehended, he accompanied Mr. Walker to the assizes at Lancaster on the following day; when the charge of high treason being abandoned, and a bill for a conspiracy found by the grand jury, he gave bail with the other defendants, to try the same at the following assizes, and was with them honourably acquitted.

To the assertion which the attorney-general for the county palatine of Lancaster was instructed to make in his opening on the trial and which was afterwards attempted to be substantiated by Dunn, in his evidence that the works of Paine, and many other works of a similar tendency were read by this defendant to the societies; he has only to observe, that the whole is untrue.

|| As to the treatment of this defendant, the following article was inserted in the appendix to the original edition:—

James Cheetham is a hatter in Manchester. He was committed on the 23d day of July 1798, to the New Bailey prison, by the rev. John Griffith, on the oath of Thomas Dunn, for speaking contemptuous words of his present majesty. He expected to be tried at the same time (viz. at the ensuing quarter sessions) with Benjamin Booth and Oliver Pearsall, both of whom were charged with expressions almost word for word the same, but instead of being brought to trial as he expected, for which he was fully prepared, and had incurred the necessary expenses, he was, without having any previous notice, or being permitted to send to his wife or friends, removed at one o'clock in the morning of the 25th of July, to Lancaster castle, where he continued till the assizes following, being imprisoned more than three weeks.

Although there was a vacant bed in the room where he lodged the night of his arrival at Lancaster, he was removed into another room the night after, where he was obliged either to sleep upon the floor, or in the same bed with the common hangman.

He was indicted at the assizes in August 1793, for damning the king, and also for the foregoing conspiracy, and was bailed on both charges. At the assizes in April last he was honourably acquitted of the latter indictment, with the other defendants. The former for which he had been committed, no evidence was brought in support of.

§ This defendant's name is Oliver Pearsall; as to the treatment he experienced, the following article was inserted in the appendix to the original edition:—

Oliver Pearsall is a native of Kidderminster, in Worcestershire, and by trade a weaver. He came to Manchester in June 1792, for the purpose of working in the manufactures there. Upon the 31st of December 1792, he became a member of the Reformation society, by which means Thomas Dunn came to know him. In March following he left Manchester, and returned to Kidderminster.

On the 29th of June 1793, the wife of Dunn, accompanied by one Parker, who, Pearsall has since learned, was a constable, and Callaghan an Irishman, came to him at Kidderminster; Dunn's wife pretending it was necessary for him to give evidence at Manchester, on behalf of her husband, who she said was in the New Bailey prison upon a false accusation, and would rather see him (Pearsall) than receive five hundred pounds, as his evidence would clear him. This Pearsall declared himself ready to comply with, and went with them to a public house, where he was told, he should have all his expenses paid, and should return back on the Wednesday following. Previous to setting off, Pearsall wanted to go home to get some clothes, which Parker refused, and then said, he had some tackling (meaning handcuffs) in his pocket, which he would put on him if he was saucy; Parker never showed any warrant, and repeatedly refused to take Pearsall before a magistrate, though several times asked to do so. On his arrival at Manchester, he was carried before the rev. John Griffith, who welcomed him to Manchester, and asked him if he did not belong to the Reformation society,

a foresaid at present unknown, to overthrow the constitution and government of this king-

ker. Dunn's evidence being still unsupported, and likely to be destroyed by this witness, the prosecution against Mr. Walker for high treason was dropped; and Pearsall was prevented from giving evidence, by being made a defendant in the indictment for a conspiracy. He was then bailed, and afterwards honourably acquitted.

¶ As to this defendant, the following articles were inserted in the appendix to the original edition:—

Benjamin Booth.—On the 5th day of June, 1793, this defendant was apprehended by virtue of a warrant issued by the rev. John Griffith, upon a charge of having distributed a paper on the subject of war, which paper was alleged to be seditious; for this charge he was bailed upon the 12th of that month; and about eleven o'clock on the very same night, he was again taken from his wife and children, under another warrant, signed by the same reverend magistrate, and was the next day committed by him to the New Bailey prison, on the oath of Thomas Dunn, on a charge of having "damned the king," and saying, "he would guillotine him if he could."

At the door of Mr. Griffith's house, a person who had been present during Booth's examination, said to the constable who was taking him to prison, "Expose him to the fury of the populace." The constable led him through the most public streets in the town, and frequently addressed himself to the mob, in very inflammatory language respecting Booth.

The rev. John Griffith refused, in the most positive terms, to admit this defendant to bail (which was offered), and he was confined in the New Bailey prison until the 19th of that month, when Mr. Griffith thought proper to receive bail.*

During the greater part of this interval, Booth was kept in a separate place; he was locked up two hours sooner, and let out of his cell two hours later, than the rest of the prisoners. The threats and temptations held out to induce him to confirm Dunn's evidence, were various and frequent. He was told that others had done so, and that he had but a few hours to determine whether he would or not, that otherwise he would most certainly be hanged, and that it was the only way to save his wife and children from ruin. Mr. Paul (then in confinement) was shown to him at one of the windows in another part of the prison. Booth was informed that Mr. Paul was committed for high treason, that Mr. Walker and others had fled from the ac-

* The bail insisted upon and given, was Booth in 500*l.* and two sureties in 250*l.* each.—*Orig. Ed.*

dom, as by law established, and to aid and assist the French, then and there being ene-

cusation; that in treason there were no accessories, all were principals; and that if he would turn king's evidence without delay, and join Dunn, Mr. Griffith would write for his pardon.

The rev. Mr. Griffith told Booth, "he wanted the great men, he wanted to pick his birds."

At length, by promises and threats, by being told the parties accused were either apprehended, or had fled from the charges against them; and being frequently reminded of the helpless situation to which his wife and children would be exposed, a promise was wrung from him to join Dunn's evidence.

Upon Booth stating his ignorance of what evidence Dunn had given, Dunn and he were put together, that Dunn might inform him; and orders were given that Booth should now be better treated, and have a moderate allowance of liquor, but not so as to make Dunn jealous.

Booth being afterwards bailed, an indictment was preferred against him at the ensuing quarter sessions, on the accusation of having "damned the king," &c. and immediately meeting the charge, though he might have traversed to the following sessions, he was tried and found guilty on the sole testimony of Dunn, although Dunn was flatly contradicted by Mary Booth, the defendant's sister, who was present when the words were said to be spoken, and swore positively they were made use of by Dunn himself, and not by her brother.

No indictment was preferred upon the first accusation, of distributing the paper, pointing out the evils which were likely to result from the war.

It is remarkable, that Dunn accused five or six different people of using precisely the same expressions respecting the king, at different times, and when not in company with each other.

The chairman of the Manchester quarter sessions, in passing sentence, observed, that Booth had been found guilty to the satisfaction of the whole bench, and the judgment of the court was, twelve months imprisonment in Lancaster castle.

Benjamin Booth, thus imprisoned, was again indicted for the conspiracy with the other defendants, at the next assizes, and with them acquitted on the trial. At the period of his acquittal, more than nine months of his imprisonment had elapsed.

Benjamin Booth being thus indicted, both at Manchester and at Lancaster, was effectually precluded from giving evidence of the practices made use of (whilst he was in prison) to prevail upon him to give false testimony against some of the other defendants.

It is perhaps not unworthy of remark, that the chairman of the Manchester quarter ses-

mies to, and in open war with, our said lord the king against our said lord the king, in case such enemies should enter into and invade this kingdom in a warlike and

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sions should afterwards be one of the grand jury who found the bills of indictment against the defendants in this trial; he was likewise foreman of the grand jury who found the bill of indictment against Dunn for perjury.

So well aware were the prosecutors, of the mode in which Booth's declaration, in support of Dunn's evidence, had been extorted from him (which he never reflects upon but with shame and contrition, and which he acknowledges to be utterly false), that they did not produce it on this trial, nor did it prevent the crown from granting Booth a pardon.

After Dunn (whose conduct was reprobated by the whole court) was committed for perjury by the judge of assize, the chairman of the Manchester quarter sessions wrote (it is said) as well as the attorney-general for the county palatine of Lancaster, to the secretary of state, for Benjamin Booth's pardon.

On the 2d of May last, Booth was set at liberty, in consequence of a pardon, of which the following is a copy:—

(L. S.) GEORGE R.

Whereas Benjamin Booth was, at a quarter sessions of the peace held at Manchester, tried and convicted of sedition, and is now in Lancaster gaol, under sentence of imprisonment for the same; and whereas some favourable circumstances have been humbly represented unto us in his behalf, inducing us to extend our grace and mercy unto him, and to grant him our free pardon for his said crime; our will and pleasure therefore is, that you cause him, the said Benjamin Booth, to be forthwith discharged out of custody, and for so doing this shall be your warrant. Given at our court at St. James's, the twenty-fifth day of April, 1794, in the thirty-fourth year of our reign.

To our trusty and well-beloved the chairman of the quarter sessions of the peace at Lancaster, the high sheriff of the said county, and all others whom it may concern.

By his majesty's command.
(Signed) HENRY DUNDAS.

Benjamin Booth has a wife and four small children.

Cheetham, Pearsall, and Booth, were all committed by the rev. John Griffith, upon the sole information of Thomas Dunn.

On the 4th of October, 1793, Benjamin Booth, while in Lancaster castle, received a letter from Mr. Cartwright, of Shrewsbury, who is a surgeon and apothecary, and a non-juring bishop, of which the following is a copy. The reader will make his own reflections upon its objects and principles.

No. XXI.—Copy of Mr. WILLIAM CARTWRIGHT's letter to BENJAMIN BOOTH, dated Shrewsbury, 27th September, 1793.

When you wrote to me, soon after the death of bishop Price, I little suspected that ever I should have seen your name in the public papers, on such an occasion as that which has rendered you so conspicuous; and reduced you to that situation which your criminal conduct has so justly deserved.

I begin this address to you in this manner, with no other design than to express my abhorrence and detestation of those principles which excited you to this conduct, for which the laws of your country are now punishing you; and which, without sincere repentance, leaves you obnoxious to the just judgment of the Almighty, whose holy laws you have so flagrantly violated, and thereby brought a scandal on that sound branch of the Catholic church, of which you were a member.

You well know, or once did know, that unfeigned allegiance, in all civil matters, to your rightful and lawful sovereign, is an essential doctrine and duty of christianity; and that all coercive resistance to him and his laws, in all cases whatsoever, and under the most trying circumstances, is threatened with damnation.

I am quite at a loss to conceive on what ground you can possibly justify or excuse your late conduct. Sure I am that before you could adopt the maxims and principles of Paine, and such men, you must either have made shipwreck of faith, and virtually renounced all reverence for the revealed will of God; or lulled your conscience into a very irreligious degree of torpor.

I thought I had sufficiently exposed the atheism of Paine's wicked book, in that paper of mine signed "Phileleutherus Christianus," which was printed and dispersed in Manchester as a hand bill, in May 1791.

I grant you there is much plausible reasoning in Paine's writings; many unsavoury truths, mixed with vile falsehoods, and gross misrepresentations: but his reasoning is entirely of that sort, with which the adversary of souls always endeavours to deceive the unwary. However, it is such as can have no influence, but upon those who have first withdrawn their minds from that dependance upon God, which is always our duty, and our best security against the temptations of Satan, the allurements of the world, and the corrupt propensities of our fallen and depraved nature. The unsavoury truths disseminated in his writings are such as, more or less, exist in all governments in the world, and ever will, till there shall be an entire renovation of the fallen sons of Adam. The speculations of those who call themselves philosophers, promise us mighty fine things indeed. But the world was not created by human wisdom, neither can it be reformed by such means as those of Thomas Paine. Reformation is a fine word; yea, and a good thing too, when

hostile manner; and the said Thomas Walker, George M'Cullum, John Smith, William Paul, Samuel Jackson, James Cheetham, Oliver Pearson, Benjamin Booth, Henry York, and Joseph Collier, in pursuance of the said conspiracy, combination, and agreement, did on those several days and times at Manchester aforesaid, in the county aforesaid, cause, incite, and encourage divers disaffected and ill-disposed subjects to the jurors aforesaid, unknown, to learn and practice and to be instructed in the use of arms and military exercises, for the purpose of assisting his said majesty's said enemies against his said majesty, in case they should enter into and invade this kingdom in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas Walker, George M' Cullum, John Smith, William Paul, Samuel Jackson, James Cheetham, Oliver Pearson, Benjamin Booth, Henry York, and Joseph Collier, so being such persons as aforesaid, and so contriving and intending as aforesaid, did on the said first day of November, in the thirty-third year aforesaid, and on divers other days and times between that day and the twelfth day of June then next following, with force and arms at Manchester aforesaid, in the county aforesaid, unlawfully, maliciously, and seditiously conspire, combine, and confederate with each other, and also with divers disaffected and ill-disposed subjects of our said lord the king, whose names are to the said jurors at

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properly set about: but the experience of France should surely teach us the folly as well as wickedness of all popular attempts at it. Let every individual strive to reform himself, and leave the rest to God. While he is doing this, he is in the way of his duty: but whoever attempts to reform his superiors, and the governing powers by the arm of flesh, will only fall from one wickedness to another, and will not come into the way of righteousness.

Possibly you may deceive yourself with a notion that you were doing right, in endeavouring to overturn the present established system of government, because some of our religious predecessors attempted, in the years 1715 and 1745 to dethrone the then reigning family. But give me leave to tell you that those attempts, whether right or wrong, whether justifiable or not, were undertaken on entire different and opposite principles to those on which you must have engaged with the new disturbers of the public peace. The former attempts were not undertaken to overturn or alter the constitution of the government of this country. No! it was a competition between a claimant to the throne, who was thought to have been unjustly and illegally dispossessed of his right, and him who withheld that supposed right from him. That competition, you well know, is now at an end. The one family being as good as entirely extinct, and the other having been so long a time in uninterrupted possession, surely we need not now hesitate which of these God has chosen to reign over us. He has declared "by me kings reign." And I believe there is not now one person of our communion who does not recognize king George as the only rightful king of Great Britain, &c.

In consideration of this unquestionable truth, and of your late seditious and rebellious practices, it is my duty, however painful, to tell you that you lie under the censure of the greater excommunication. The consequences of such a state I need not explain to you, any further than to tell you that without an exemplary repentance there can be no pardon for you either in this world or that which is to come. By an exemplary repentance, I mean not only a sincere contrition, such as is described in the cxlth lesson, page 400, of our catechism, but also the most effectual restitution and satisfaction, which it may be in your power to make to that government which you have insulted, and the laws which you have violated. And this can no other way be done than by disclosing to a proper magistrate every thing which you know of seditious and rebellious plots; and endeavouring, not for the sake of revenge or malice, but for the sake of justice, and better security of the public peace, to bring all your associates in iniquity, to such punishment as the law prescribes.

Thus have I faithfully admonished you, in love to your soul and body too, and delivered my own soul on this occasion. I pray God to give you a right understanding in these, and in all things concerning your eternal welfare, and am—Your faithful but afflicted pastor and friend,

(Signed) WILLIAM CARTWRIGHT.

I shall send this to you under the cover of a frank, directed to an old, sensible, and very worthy friend of mine, whom I have not seen for above twenty-three years last. His name is Langshaw, now organist of Lancaster. I shall request him to give you the most efficacious advice he can; I am persuaded it will be good and friendly: and I believe him to be as capable of convincing you of those delusive errors into which you have fallen, as I am. If you have a due sense of your crimes, it will give me some consolation to receive a letter from you: otherwise not.

I believe it is not permitted to persons in your situation to send or receive letters, without the inspection of the governor, and I have no objection that he should see this. I shall send it unsealed to Mr. Langshaw.

To Mr. *Benjamin Booth*,
Lancaster Castle.

present unknown, to overthrow by force and arms the constitution and government of this kingdom, as by law established: and the said Thomas Walker, George M'Cullum, John Smith, William Paul, Samuel Jackson, James Cheetham, Oliver Pearson, Benjamin Booth, Henry York, and Joseph Collier, in pursuance of the said last-mentioned conspiracy, combination, and agreement, did, on those several days and times at Manchester aforesaid, in the county aforesaid, cause, incite, and encourage, divers disaffected and ill-disposed subjects, to the jurors aforesaid unknown, to learn, and practice, and to be instructed in the use of arms and military exercises, for the purpose of overthrowing by force and arms, the constitution and government of this kingdom as by law established, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present that the said Thomas Walker, George M'Cullum, John Smith, William Paul, Samuel Jackson, James Cheetham, Oliver Pearson, Benjamin Booth, Henry York, and Joseph Collier, so being such persons as aforesaid, and so contriving and intending as aforesaid, did, on the said first day of November, in the thirty-third year aforesaid, and on divers other days and times between that day and the twelfth day of June then next following, with force and arms, at Manchester aforesaid, in the county aforesaid, unlawfully, maliciously, and seditiously conspire, combine, and confederate with each other, and also with divers disaffected ill-disposed subjects of our said lord the king, whose names are to the said jurors at present unknown, to raise and stir up an insurrection and rebellion of his majesty's subjects, against his said majesty, and to aid and assist in such insurrection and rebellion, for the purpose of overthrowing by force and arms, the constitution and government of this kingdom as by law established, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas Walker, George M'Cullum, John Smith, William Paul, Samuel Jackson, James Cheetham, Oliver Pearson, Benjamin Booth, Henry York, and Joseph Collier, so being such persons as aforesaid, and so contriving, and intending as aforesaid, did, on the said first day of November, in the thirty-third year aforesaid, and on divers other days and times between that day and the twelfth day of June then next following, with force and arms at Manchester aforesaid, in the county aforesaid, unlawfully, maliciously, and seditiously conspire, combine, and confederate with each other, and also with divers disaffected and ill-disposed subjects of our said lord the king, whose names are to the said jurors at present unknown, unlawfully to overthrow the constitution and government of this kingdom as by law established, in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

BATT.

Witnesses THOMAS DUNN.
THOMAS KINNASTON.

Copy of the Indictment against Thomas Walker.

Lancashire } THE jurors for our lord the king,
to wit. } upon their oath present, that Thomas Walker, late of Manchester, in the county of Lancaster, merchant, being a pernicious, seditious, and ill-disposed person, and greatly disaffected to our said lord the king, and contriving, and intending to move and incite the liege subjects of our said lord the king, to hatred and dislike of the person of our said lord the king on the first day of June, in the thirty-third year of the reign of our said lord the king, at Manchester aforesaid, in the county aforesaid, in the presence, and hearing of divers liege subjects of our said lord the king, maliciously, and seditiously did utter, publish, and declare, the words following, of and concerning our said lord the king, that is to say, "What are kings, damn the king (meaning our said lord the now king), what is he (meaning our said lord the king) to us, if I (meaning the said Thomas Walker) had him (meaning our said lord the king) in my power, I (meaning the said Thomas Walker) would as soon take his (meaning our said lord the king's) head off as I (meaning the said Thomas Walker) would tear this paper," he the said Thomas Walker, then and there tearing in pieces a piece of paper which he then and there had, and held in his hand to the great scandal of our said lord the king, in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown, and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas Walker, so being such person as aforesaid, and so contriving and intending as aforesaid, afterwards, to wit on the same day and year aforesaid, at Manchester aforesaid, in the county aforesaid, in the presence and hearing of divers other liege subjects of our said lord the king, maliciously, and seditiously did utter, publish, and declare, the words following, of and concerning our said lord the king, that is to say, "Damn the king" (meaning our said lord the king) to the great scandal of our said lord the king, in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king,

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his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas Walker, so being such person as aforesaid, and so contriving, and intending as aforesaid, afterwards, to wit on the same day and year aforesaid, at Manchester aforesaid, in the county aforesaid, in the presence and hearing of divers other liege subjects of our said lord the king, maliciously, and seditiously, did utter, publish, and declare, the words following, of and concerning our said lord the king, that is to say, "If I (meaning the said Thomas Walker) had him (meaning our said lord the king) in my power, I (meaning the said Thomas Walker) would as soon take his (meaning our said lord the king's) head off as I would tear this piece of paper," he the said Thomas Walker, then and there, tearing a piece of paper, which he then and there had in his hand, to the great scandal of our said lord the king, in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present that the said Thomas Walker, so being such person as aforesaid, and so contriving and intending as aforesaid, afterwards, to wit on the same day and year aforesaid, at Manchester aforesaid, in the county aforesaid, in the presence and hearing of divers other liege subjects of our said lord the king, maliciously and seditiously did utter, publish and declare the words following, of and concerning our said lord the king, that is to say "There ought to be no king" (meaning that there ought to be no king of this realm) to the great scandal of our said lord the king, in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

BATT.

Witness THOMAS DUNN.

Copy of the Indictment against James Cheetham.

Lancashire, to wit. } THE Jurors for our lord the king upon their oath present that James Cheetham, late of Salford, in the county of Lancaster, labourer, being a pernicious, seditious, and ill-disposed person, and greatly disaffected to our said lord the now king, and contriving and intending to move and incite the liege subjects of our said lord the king to hatred and dislike of the person of our said lord the king, on the tenth day of June, in the thirty-third year of the reign of our said lord the king, at Manchester, in the county of Lancaster aforesaid, in the presence and hearing of divers liege subjects of our said lord the king, did utter, publish, and declare, the words following, of and concerning our said lord the king, that is to say "Damn the king (meaning our said lord the king), I (meaning himself the said James Cheetham) wish he (meaning our said lord the king) was in the New Bailey prison, instead of Benjamin Booth, to the great scandal of our said lord the king, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present that the said James Cheetham, so being such person as aforesaid, and so contriving and intending as aforesaid, afterwards, to wit, on the same day and year aforesaid, at Manchester aforesaid, in the county aforesaid, in the presence and hearing of divers other liege subjects of our said lord the king, by whom the word guillotined, hereinafter mentioned, was understood to mean put to death; did utter, publish, and declare, the words following, of and concerning our said lord the king (that is to say) "I (meaning himself the said James Cheetham) wish he (meaning our said lord the king) was guillotined" (meaning put to death) to the great scandal of our said lord the king, in contempt of our said lord the king, and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said James Cheetham, so being such person as aforesaid, and so contriving and intending as aforesaid, afterwards to wit, on the same day and year aforesaid, at Manchester aforesaid, in the county aforesaid, in the presence and hearing of divers other liege subjects of our said lord the king, did utter, publish and declare the words following, of and concerning our said lord the king, that is to say, "Damn the king" (meaning our said lord the king) to the great scandal of our said lord the king, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

BATT.

Witness, THOMAS DUNN.

The three preceding indictments were found by the grand jury, of which the following is a list:—

Sir Henry Hoghton, baronet, of Hoghton, foreman.
Thomas Butterworth Bayley, esq. of Hope.
Henry Blundell, esq. of Liverpool.
William Bankes, esq. of Winstanley.
Samuel Bailey, esq. of Lancaster.
Richard Crosse, esq. of Adlington.
Robert Fletcher, esq. of Preston.
Henry Philip Hoghton, esq. of Hoghton.
Daniel Hoghton, esq. of same.
Edward Gregg Hopwood, esq. of Hopwood.
Geoffrey Hornby, sen. esq. of Preston.
William Hulton, esq. of Hulton.
Bold Fleetwood Hesketh, esq. of Rossall.
Abraham Rawlinson, esq. of Ellel-hall.
William Rawlinson, Esq. of Ancoats.

Thomas Saul, esq. of Lancaster.
Richard Shawe, esq. of Preston.
Thomas Starkie, esq. of Frenchwood.
Clayton Tarleton, esq. of Liverpool.
Daniel Wilson, esq. of Dalham Tower.

JURY.

William Harper, of Everton.
Edward Entwisle, of Damend, in Ribchester.
John Jolly, of Mythrop.
Richard Dixon, of Poulton.
John Ellison, of Liverpool.
James Parke, of Preesall.
Alexander Tomlinson, of Oswaldtwistle.
John Williamson, of Scotforth.
John Carter, of Hambleton.
William Culshaw, of North Meols.
Nicholas Heys, of Upholland.
Joseph Brown, of Poulton.

Counsel for the Crown.—Mr. Law, attorney-general for the county palatine of Lancaster; Mr. Wood, Mr. Topping, Mr. Johnson, Mr. James.

Solicitor.—Mr. White, solicitor to the Treasury.

Counsel for the Defendants.—The honourable Thomas Erskine; Mr. serjeant Cockell, Mr. Chambre, Mr. Lloyd, Mr. Felix Vaughan.

Solicitors.—Messrs. Duckworth and Dennett, Mr. William Seddon.

The indictment having been opened by Mr. James, Mr. Law stated the case as follows:—

May it please your lordship; gentlemen of the jury.—The indictment which has been read to you, imputes to the defendants a species of treasonable misdemeanor, second only in degree, and inferior only in malignity, to the crime of high treason itself. It imputes to them a conspiracy for the purpose of adhering with effect to the king's enemies, in case the calamity of foreign invasion or of internal and domestic tumult should afford them the desired opportunity of so doing—a conspiracy for the purpose of employing against our country those arms which should be devoted to its defence; and of overthrowing a constitution, the work of long-continued wisdom and virtue in the ages that have gone before us, and which, I trust, the sober-minded virtue and wisdom of the present age will transmit unimpaired to ages that are yet to succeed us. It imputes to them a conspiracy, not indeed levelled at the person and life of our sovereign, but at that constitution at the head of which he is placed, and at that system of beneficial laws which it is his pride and his duty to administer;—at that constitution which makes us what we are, a great, free, and, I trust, with a few exceptions only, a happy and united people. Gentlemen, a conspiracy formed for these purposes, and to be effected eventually by means of arms;—a conspiracy which had either for its immediate aim or probable consequence, the introduction into this country, upon the model of France, of all the miseries that disgrace and desolate that unhappy land, is the crime for which the defendants stand arraigned before you this day; and it is for you to say, in the first instance, and for my lord hereafter, what shall be the result and effect in respect to persons, against whom a conspiracy of such enormous magnitude and mischief shall be substantiated in evidence.

Gentlemen, whatever subjects of political difference may subsist amongst us, I trust we are in general agreed in venerating the great principles of our constitution, and in wishing to sustain and render them permanent. Whatever toleration and indulgence we may be willing to allow to differences in matters of less importance, upon some subjects we can allow none;—to the friends of France, leagued in unity of council, inclination, and interest with France, against the arms and interests of our country, however tolerant in other respects, we can afford no grains of allowance, no sentiments of indulgence, or toleration whatsoever; to do so, at a time when those arms and councils are directed against our political and civil, against not our national only, but our natural existence (and at such a period you will find that the very conspiracy now under consideration was formed), would be equally inconsistent with every rule of law and every principle of self-preservation:—it would be at once to authorize every description of mischievous persons to carry their destructive principles into immediate and fatal effect; in other words, it would be to sign the doom and downfall of that constitution which protects us all.

I am sure, therefore, that for the crime, such as I have represented it to be, my learned friend will not, in the exercise of his own good sense, choose to offer any defence or apology; but he will endeavour to make the evidence I shall lay before you, appear in another point of view:—he will endeavour to conceal and soften much of that malignity which I impute, and I think justly, to the intentions and actings of these defendants,

It was about the close of the year 1792, that the French nation thought fit to hold out to all the nations on the globe, or rather, I should say, to the discontented subjects of all those nations, an encouragement to confederate and combine together, for the purpose of subverting all regular established authority amongst them, by a decree of that nation of the 19th of November 1792, which I consider as the immediate source and origin of this and other mischievous societies. That nation, in convention, pledged to the discontented inhabitants of other countries, its protection and assistance, in case they should be disposed to innovate and change the form of government under which they had heretofore lived. Under the influence of this fostering encouragement, and meaning, I must suppose, to avail themselves of the protection and as-

sistance thus held out to them, this and other dangerous societies sprang up and spread themselves within the bosom of this realm.

Gentlemen, it was about the period I mentioned, or shortly after, I mean in the month of December, which followed close upon the promulgation of this detestable decree, that the society on which I am about to comment, —ten members of which are now presented in trial before you,—was formed.* The vigilance of those to whom the administration of justice, and the immediate care of the police of the country is primarily intrusted, had already prevented or dispersed every numerous assembly of persons which resorted to public-houses for such purposes; it therefore became necessary for persons thus disposed, to assemble themselves, if at all, within the walls of some private mansion. The president and, head of this society, Mr. Thomas Walker, raised to that bad eminence by a species of merit which will not meet with much favour or encouragement here, opened his doors to receive a society of this sort at Manchester, miscalled the Reformation Society: the name may, in some senses, indeed import and be understood to mean a society formed for the purpose of beneficial reform; but what the real purposes of this society were, you will presently learn, from their declared sentiments and criminal actings. He opened his doors, then, to receive this society;—they assembled, night after night, in numbers to an amount which you will hear from the witnesses: sometimes, I believe, the extended number of such assemblies amounting to more than a hundred persons. There were three considerable rooms allotted for their reception. In the lower part of the house, where they were first admitted, they sat upon business of less moment, and requiring the presence of smaller numbers;—in the upper part, they assembled in greater multitudes, and read, as in a school, and as it were to fashion and perfect themselves in every thing that is seditious and mischievous, those writings which have been already reprobated by other juries, sitting in this and other places, by the courts of law, and in effect by the united voice of both Houses of Parliament. They read, amongst other works, particularly the works of an author, whose name is in the mouth of every body in this country; I mean the works of Thomas Paine; an author who, in the gloom of a French prison, is now contemplating the full effects and experiencing all the miseries of that disorganizing system of which he is, in some respect, the parent—certainly the great advocate and promoter.

The works of this author, and many other works of a similar tendency, were read aloud by a person of the name of Jackson, who exercised upon those occasions the mischievous function of reader to this society. Others of the defendants had different functions assigned them; some were busied in training them to the use of arms, for the purpose, avowedly, in case there should be either a landing of the French, with whom we were then, I think, actually at war or about to be immediately at war; or in case there should take place a revolt in the kingdoms of Ireland or Scotland, to minister to their assistance, either to such invasion or to such revolt. That they met for such purposes is not only clear from the writings that were read aloud to them, and the conversations that were held, but by the purposes which were expressly declared and avowed by those who may be considered as the mouth-pieces and organs of the society upon these occasions.

The first time, I think, that the witness, Dunn, whom I shall presently produce to you, saw the defendant Mr. Walker, Mr. Walker declared to him, "that he hoped they should soon overthrow the constitution." The witness I have alluded to, was introduced to the society by two persons, I think of the names of M'Callum and Smith, and who, if I am not misinformed, have since taken their flight from this country to America. The first night he was there, he did not see their president Mr. Walker, but on the second night that he went there, Mr. Walker met him as he entered the door, and observing, from his dialect, that he was a native of Ireland, Mr. Walker inquired of him how the volunteers went on and said, with a smile, as he passed him in his way up stairs to the rest of the associated members, "We shall overthrow the constitution by-and-by." The witness was then ushered into this room, where he saw assembled nearly to the number of a hundred or a hundred and fifty persons. The room was, I understand, a large warehouse at the top of the house; there were about fourteen or fifteen persons then actually under arms, and some of those whose names are to be found in this record were employed in teaching others the military exercise. It would be endless, as well as useless, to relate to you the whole of what passed at these several meetings.

Upon some occasions, Mr. Walker would talk in the most contumelious and abominable language of the sacred person of our sovereign. In one instance when talking of monarchy, he said, "Damn kings! what have we to do with them, what are they to us?" and, to show the contempt in which he held the lives of all kings, and particularly that of our own sovereign, taking a piece of paper in his hand, and tearing it he said, "If I had the king here, I would cut off his head, as readily as I tear this paper."

Upon other occasions, others of the members, and particularly a person of the name of Paul, who I believe is now in court, held

* The Manchester Constitutional Society was instituted in October 1790; the Reformation Society, in March 1792; the Patriotic, Society, in April 1792. *Orig. Ed.*

similar language:—damning the king;—reviling and defaming him in the execution of his high office;—representing the whole system of our public government as a system of plunder and rapacity;—representing, particularly, the administration of a neighbouring kingdom by a lord lieutenant, as a scheme and device merely invented to corrupt the people, and to enrich and aggrandize the individual to whose care the government of that kingdom is more immediately delegated;—in short, arraigning every part of our public economy as directly productive of misgovernment and oppression. The king himself was sometimes more particularly pointed at by Mr. Walker. He related of him a strange, incredible, and foolish fable, which I never heard suggested from any other quarter:—"That his majesty was possessed of seventeen millions of money in some bank or other at Vienna, which he kept locked up there, and would not bestow a single penny of it to relieve the distresses and indigence of any part of his own subjects." Many other assertions of this sort were made, and conversations of a similar import held, between Mr. Walker and the persons thus assembled.

About three months after the formation, as far as I can recollect it, of this society, that is, about the month of March 1793, a person of the name of Yorke—Yorke of Derby, I think he is called,—arrived at Manchester, with all the apparatus of a kind of apostolic mission, addressed to the various assemblies of seditious persons in that quarter of the kingdom. He harangued them upon such topics as were most likely to interest and inflame them;—he explained to them the object of the journey he was then making through the country;—he said, he was come to visit all the combined societies, in order to learn the numbers they could respectively muster, in case there should be an invasion by the French, which was then talked of, and is yet, I am afraid, talked of but upon too much foundation;—to know, in short, what number they could add to the arms of France, in case these arms should be hostilely directed against Great Britain itself;—he stated that the French were about to land in this country to the number of forty or fifty thousand men, and that he was collecting, in the different societies, the names of such persons as could be best depended upon; in order to ascertain what number in the whole could actually be brought into the field upon such an emergency.

When this person was present, there seems to have been a sort of holiday and festival of sedition: each member strove with his fellow which should express sentiments the most injurious and hostile to the peace and happiness of their country. Dunn, the witness I have already alluded to, will speak to the actual communication of all the several persons who are defendants upon this record in most of the mischievous councils which were then held, and which are the subject of this prosecution. They met during a considerable length of time he attended (and here you will not be called upon to give credit to a loose and casual recollection of a few random expressions, uttered upon one or two accidental occasions, capable of an innocent or doubtful construction); but he attended, I believe, at nearly forty of these meetings;—he attended them from about the month of December or January, down to the month of June, when, either through compunction for the share he had himself borne in those mischievous proceedings, or whatever else might be his motive—I trust it was an honourable one, and that it will in its effects prove beneficial to his country,—he came forward and detailed this business to the magistrates of this county. It became them, having such circumstances related to them, and having it also confirmed by other evidence, that there were numerous nightly meetings of this sort held at stated intervals at the house of Mr. Walker, upon having the objects of these meetings detailed and verified to them—it became them, I say, to use means for suppressing a mischief of such extent and magnitude. It was accordingly thought proper to institute this prosecution for the purpose of bringing these enormous proceedings into public discussion and inquiry, before a jury of the country, and for the purpose of eventually bringing to condign punishment the persons immediately concerned in them.

Gentlemen, the evidence of this person, the witness I have mentioned, will unquestionably be assailed and attacked by a great deal of attempted contradiction;—his character will, I have no doubt, be arraigned and drawn in question from the earliest period to which the defendants can have any opportunities of access, for materials respecting it. Upon nothing but upon the effectual impeachment of the character of this witness, can they bottom any probable expectations of acquittal;—to that point, therefore, their efforts will be mainly directed. I wish their efforts had been hitherto directed innocently towards the attainment of this object, and that no opportunities had been recently taken, in occasional meetings and conversations, to attempt to tamper with the testimony of this witness. There are other practices, which, next to an actual tampering with the testimony of a witness, are extremely mischievous to the regular course and administration of justice—I mean attempts to lure a witness into conversations respecting the subject of his testimony; of this we have seen many very blameable instances in the course of the present circuit, where conversations have been set on foot for the purpose of catching at some particular expressions, inadvertently dropt by a witness, and of afterwards bringing them forward, separately and detached from the rest of the conversation, in order to give a different colour and complexion to

the substance of his evidence, and to weaken the effect and credit of the whole.

Gentlemen, these attempts are too commonly made;—happily, however, for public justice, they are commonly unsuccessful; because they do and must, with every honourable mind, recoil upon the party making them. Private applications to a person not only known to be an adverse witness, but to be the very witness upon whose credit the prosecution most materially depends; private conversations with such a witness, for the purpose of getting from him declarations which may be afterwards opposed in seeming contradiction to his solemn testimony upon oath, are of themselves so dishonourable, that, with every well-disposed and well-judging mind, they will naturally produce an effect directly contrary to the expectations of the persons who make them.

I know, gentlemen, what I have most to fear upon this occasion; I know the vigour and energy of the mind of my learned friend. —I have long felt and admired the powerful effect of his various talents—I know the ingenious sophistry by which he can mislead, and the fascination of that eloquence by which he can subdue the minds of those to whom he addresses himself.—I know what he can do to-day, by seeing what he has done upon many other occasions before. But, at the same time, gentlemen, knowing what he is, I am somewhat consoled in knowing you. I have practised for several years in this place; I know the sound discretion and judgment by which your verdicts are generally governed; and upon the credit of that experience, I trust that it will not be in the power of my friend, by any arts he is able to employ, to seduce you a single step from the sober paths of truth and justice. You will hear the evidence with the attention which becomes men who are deciding on the fate of others. If these defendants be innocent, and my learned friend is able to substantiate their innocence, to your satisfaction, for God's sake let them be acquitted; but if that innocence cannot be clearly and satisfactorily established, I stand here interested as I am in common with him in the acquittal of innocence, at the same time however demanding the rights of public justice against the guilty. It imports the safety of yourselves,—it imports the safety of our country,—it imports the existence and security of every thing that is dear to us, if these men be not innocent, that no considerations of tenderness and humanity,—no considerations of any sort short of what the actual abstract justice of the case may require, should prevent the hand of punishment from falling heavy on them.

Having, therefore, gentlemen, given you this short detail and explanation of the principal facts which are about to be laid before you in evidence, I will now close the first part of the trouble I must give you. I shall by-and-by, when my learned friend has adduced that evidence by which he will attempt to assail the character and credit of the principal witness for the prosecution, have an opportunity of addressing you again; and, I trust, in the mean time, whatever attention you may be disposed to pay to the exertions of those who will labour to establish the innocence of the persons now arraigned before you, that you will at the same time, steadily bear in mind the duties which you owe to yourselves and to your country;—recollecting, as I am sure you will, that we all look up to your firmness and integrity at this moment, for the protection of that constitution from which we derive every blessing we individually or collectively enjoy.

EVIDENCE FOR THE CROWN.

Thomas Dunn, sworn.—Examined by Mr. *Wood*.

I believe you are a weaver, and live at Manchester?—Yes.

Were you at any time introduced to any society at Mr. Walker's house there—Yes I was

Do you recollect when it was?—I believe in the latter end of September in the year 1792.

Whom were you introduced by?—M'Callum and Smith.

What was this society called?—The Reformation society.

What is become of M'Callum and Smith?—I cannot tell; the last time I saw them they told me they were going to America.

What number of people might there be when you were first introdued;—Sometimes there were more, sometimes less; I cannot tell the exact number.

How many do you think there were the first time when you were introduced by M'Callum and Smith?—Perhaps fifty or sixty.

Were you all in the same room, or in different rooms?—In different rooms.

How many different rooms might you be in?—In two as far as I can recollect, that night.

What was going forward in these different rooms?—As far as I could see there were politics spoken of, and other men were learning discipline.

What had they to learn their discipline with?—Firelocks.

How many might there be learning their discipline?—About six or seven.

Was that in the room in which they were talking politics?—No, in a different room.

Do you recollect what sort of politics were talked?—They were reading a paper; I cannot exactly tell the words; the whole of the meeting was entirely with respect to a reformation in parliament; the motive was entirely that, as far as I could understand.

Did you say the motive was entirely that?

—Yes, as far as I could understand it that night.

How long might you be there that night?—I cannot recollect the time: I never stopped above an hour or two there, my employ called me that I could not come there before eight o'clock; I commonly went back again to get home again about ten.

When was the next time you were there?—I went there the Monday following.

Was Monday the day of meeting?—Yes, the particular day.

Did you see Mr. Walker at that time?—Not the first day I did not; I saw him the second time.

Where did you see him?—I knocked at his door, and I met him at the door within the house.

What did Mr. Walker say to you?—He wanted to know my business. I told him I wished to go to the society; he said he perceived I was an Irishman; I said yes I was; he said, had I any account from Ireland lately, and how the volunteers were going on? I told him I thought they were going on very prosperous; upon that he just waved his hand, and said, we would overthrow the constitution by-and-by; upon that I went up to the society room: there was a candle and candlestick in every passage up the stairs.

Did you see any body there?—Yes, a great many people.

How many do you suppose there were at that time?—I think there might be above a hundred and fifty there that night.

What were they doing?—Some one thing, some another, there were about fifteen or sixteen under arms.

What were they doing under arms?—Going through the manual exercise.

Was there any body there to instruct them in it?—O yes, one Oliver Pearsall.

Did Mr. Walker come among you?—Yes.

Do you remember one Samuel Jackson?—Yes.

Was he there at this time?—I do not know but he might come there,

Do you know whether he was there or not? I actually cannot tell whether I saw him there at that time or not.

Was there any thing done at that meeting except learning the exercise?—No.

How long might you stay that night?—Not very long, I never stopped very long.

Did you go again after that?—Yes, very often.

Did you see Mr. Walker there?—Yes, every night; I never missed Mr. Walker but one night.

Did you ever hear Mr. Walker say any thing relative to what was going forward there about these people learning the use of arms?—I do not know what you mean.

You have said, there were people there learning their exercise?—Yes.

Have you heard Mr. Walker say for what purpose it was?—Yes I have.

What did he say?—I have heard him say so far as this, that it was his intention and the design was to forward and to aid the French, if they would land here.

Do you know Cheetham?—Yes, very well.

And Booth?—Yes.

Did you see them there?—Yes.

And Paul?—Yes, I saw him there

Did you see them there frequently, or only once or twice?—Frequently.

Did you see Collier there?—I did.

Have you ever seen Jackson at any of these meetings?—O yes, he was a very great reader in politics.

Did he read to the people that were there?—Yes.

What sort of books might he read?—Paine's Works, and a man, I forget him now, and Cooper's Reply to Mr. Burke's Invective, and other matters; he always had something new.

Was it declared what was the intent of this society?—I absolutely just will inform you, candidly, in my opinion, as far as I can learn, when I came to understand myself properly, that it was to overthrow the whole constitution.

Did you understand it so?—I understand it so now, but not at that time.

What did you understand then was the object and design of this meeting?—I understood at that time that it was to serve poor people.

How were the poor people to be served?—By association together, I thought, and to have so far as this to be neighbourly, and no further; I thought so.

Did you ever hear any thing said about the Irish or the Scotch?—At what time?

At any of those meetings?—Yes I did.

What was said about them?—I recollect to hear a letter read, an address from the United Irishmen to Scotland.

Who read that?—Mr. Paul I think, to the best of my recollection; it was either he, or Jackson; but however, Mr. Paul came out with these expressions, which I will relate to the whole court; the matter stood thus, when the letter was read I cannot say, whether he, or Paul might read it himself, I cannot pretend to say, but Mr. Paul said, that if ever we should have a revolt, it would be from the Irish; he says, I have property in Ireland myself, and he wondered the Irishmen there mentioned did not exert themselves more than they did do; I happened to be the very next man to him, I said I am an Irishman myself; he said, I know you are, he said, if ever we should have a revolt, it should be through the Irish; they have sent a deputy to Ireland as a king; damn him, said he, and all kings.

Do you remember Mr. Yorke—Henry Yorke?—Yes I do; I will not pretend to say that I should know the man; I never saw him but one night for about an hour.

Whom was he introduced by?—By Mr. Thomas Walker.

What was he introduced for?—It was that very night that he happened to come, it happened to be very thin of people; but howsoever he was introduced, and took by his arm into our place; he was introduced as a gentleman of the same principles; and all hands were put up that he should be the chairman.

And did he take the chair?—He did.

What did he say to you?—He mentioned he was glad to see so many loyalists; he was glad to see so many friends; he had just come from Sheffield; he said he was only a short time from France; that he lay a fortnight in Paine's house in Paris. At this time there were different opinions with respect to whether they should draw up a petition to recommend for a reform; he said, there was that height of petitions [describing it] from Scotland and other parts.

Had he those petitions with him?—No, he told us it was so in Sheffield, different copies; he said nothing will do but a reform—a reformation then was clapped—he said, that he was going through the three kingdoms, to see what aid they could have to assist the French, if they should land here.

Mr. *Erskine.*—Repeat that over again.—To aid and assist, to know the aid that might be for the French.

Mr. *Wood.*—Did he say any thing about the number of French that might be expected?—Fifty thousand.

Were there a great many members present that night?—Not a great many, I cannot say the exact number; there might be about fifty, it was a very wet night, I recollect that.

Was there any exercises learned that night?—Yes, there was.

How many different meetings might you attend in all, think you?—I dare say forty or fifty, I can be safe upon that.

Do you remember Benjamin Booth's being taken into custody?—I do.

Did you apply to the society upon that occasion?—I did.

What was your application for him?—To get him some money.

Did you get any money for him?—There was some money got for him that night.

Do you remember being there at any other time, when there was any conversation about the king?—Many times; I do not suppose there was any night but there was something of that kind.

Recollect something that was said about the king.—Upon what night?

When any thing was said about the king.—I remember being there one night in particular, when Mr. Thomas Walker was speaking with respect to war; he disapproved of the war entirely, and he thought the ministry was highly to blame, and the whole to involve us in a war. That he had seventeen million of money in the bank of Vienna.

Who had seventeen million of money?—The king, in the bank of Vienna, and he would not give one penny to serve the poor; damn him, and all kings. He had a bit of paper in his hand; he said he would as soon take his head off as he would that, and he tore the paper.

Do you recollect how many people were present then?—I cannot pretend to say how many there were.

Did you hear any thing said that night about Ireland?—I do not recollect I did.

Did you hear him at any other time say any thing about Ireland? did you hear William Paul say any thing?—I mentioned that; I will say it over again, if you please.

Do so.—There was an address of the United Irishmen to Scotland.

You said that before; do you remember being at a meeting after the death of the late French king?—Yes.

Who was there then?—A good many.

Was Collier there?—Yes, he came in, we were discoursing the matter, and all rejoicing upon it; he came into the place; he thought he was the first, in one sense, to announce to the company that it was so; he passed round, he damned him, and wished all kings were served so.

Do you remember whether Jackson recommended any thing to the meeting?—He recommended every thing to be very candid, and keep every thing very secret, that we should be unanimous one to another.

Did you go openly and publicly to Mr. Walker's house?—No, latterly we went there as private as possible since.

Which door did you go in at?—At the back door.

Since what time was it that you went privately?—Since it was known so publicly, that we were called Painites, when we were turned out of the public-houses, that we could not meet there.

Then you went to Mr. Walker's?—Yes, he opened that house for us.

What door did you go in at?—The back door in general; I never went in at the front door in my life, but at the second time.

Did others go in at the back door or not?—Some went in at the front, some at the back door.

What were you afraid of?—I was afraid, as much as any thing, of the constables.

Do you know whether they were watching you or not?—I knew they were.

What constables were watching you?—The different constables of the town; I think the deputy of Salford was watching us as much as any body. Mr. Walker sent out different men to watch them; there are men in the bar, that if they would speak the truth, know they went out to watch them.

Thomas Dunn. — Cross-examined by Mr. *Erskine.*

What is your christian name?—Thomas Dunn.

Why do you call it your christian name?—I was brought up by that.

‡

Were you ever christened?—I hope so.

Then you forgot that circumstance formerly—do you hear me?—Yes.

You forgot that circumstance once of your having been christened.—Have I? how long since?

Do you remember ever having been asked the question?—I remember you asked me what my name was, and I answered you that my name was Thomas Dunn.

Were you never asked at any other time, and by any body else?—Very well, and suppose I choose to tell this or that.

But you happened to be upon your oath at the time I am speaking of?—I am speaking now, that my name is Thomas Dunn, and upon my oath I am speaking, I know what you are upon Mr. Erskine; I tell you in this place that I defy you, though the learned Mr. Erskine is come down here to insult me.

Mr. Justice *Heath*.—You must behave properly.—I have served his majesty for years, and would serve him to-day; is Mr. Erskine to disprove my name?

Mr. Justice *Heath*.—You must not put yourself in a passion, but behave decently.

Mr. *Erskine*.—I wish this worthy gentleman may be left to himself, subject only to your lordship's interposition when he misbehaves. You will find I am not so easily put out as you fancy; therefore I will resume my question again: Were you never asked, when you were sworn to speak the truth, whether you had been christened or not, and what answer did you give?—No, never in my life.

Do you mean to swear, that such a question was never put to you in a court of justice, when you came forward to convict one of these innocent men that you are now a witness against?—Innocent!

That his lordship and the jury are to try. Was that question ever put to you, and did you give it any, and what answer? I am in no hurry; his lordship will have the goodness to wait for you.—If you will speak the words over again.

Were you never asked, when sworn upon the gospels to speak the truth, whether you were christened or no, and what answer did you give?—I tell you I never was in my life.

Never was what?—I never was asked whether I was christened or not.*

You can read, I take it for granted?—No, I can neither read nor write.

There is something wrote up there [opposite the witness box], which otherwise I would have recommended to your perusal?†—I am quite an illiterate man.

Who was it that told you I was come down here for the purpose of insulting you?—What, Mr. Erskine.

You seem perfectly familiar with my name.—Yes, and I know your person too.

Who told you that?—No gentleman here told me.

How came you to know?—I was acquainted the night before last where you lodged at Preston.

Who told you so?—The landlord, that you and Mr. Walker were there together.

You never knew any thing of me before that?—O yes, I saw you before; I know more of you than you fancy.

Did you ever see me before or not?—I saw your picture.

That is all?—Yes.

Was that all you meant when you said you knew more of me than I fancied?—No, I could tell you more. [Here Mr. Justice Heath interrupted Mr. Erskine by saying we have nothing to do with this.]

It was in the month of September you first went to this meeting?—I do not know but it might.

Do you mean to swear that it was?—No, I I do not mean to swear about it.

Do you know what month it was in?—No.

Do you know what year it was in?—In 1792.

Do you remember the riot at Manchester?—Yes.

When Mr. Walker's house was surrounded and attacked?—I remember to have heard of it.

Was it before or after that?—After.

You are certain of that?—Very certain.

The first time you were at this society was after the riot?—Yes.

How long do you think it might be after the riot? some weeks, was it not?—I think it was a few days.

Are you quite sure it was after the riot?—Yes.

And you think about a few days?—Yes.

Which society did you belong to?—The Reformation Society.

Were you elected into it, or did you go upon the invitation of any body?—I went upon the invitation of one Smith and M'Callum.

Nobody else knew you there, of course, that constituted this society?—I knew two or three of them when I went in.

The rest were strangers to you?—Yes.

So much so, that you did not even know their names, nor they you?—I knew them by sight; their names I did not know.

At the next meeting you saw Mr. Walker?—Yes.

At the door of his house, I think you tell us, you met him. Was he acquainted with you, or you with him?—I never saw the man in my life before, not to know him.

He found out that you were an Irishman by your tongue, of course?—Yes.

And asked your business?—Yes.

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* When Benjamin Booth was convicted at the Manchester sessions, upon Dunn's sole evidence, Dunn was asked if he had ever been baptised; to which he replied in the negative. —*Orig. Ed.*

† "Thou shalt not bear false witness against thy neighbour."—*Orig. Ed.*

You told him you were going to the society? —Yes.

Were Smith or M'Callum with you at that time?—No person but myself.

Then Mr. Walker knew nothing of you but what you told him?—Just so.

He asked you whether you had heard from Ireland lately about the volunteers?—Yes.

And immediately upon that he rapped out what you told us a little while ago about the constitution?—Yes.

And then you went to the society, and Mr. Yorke took the chair?—It was not that night that Mr. Yorke took the chair.

How long after was it that Mr. Yorke took the chair?—A very little time after.

What passed the night of the day you saw Mr. Walker?—Nothing transpired more than was customary in the place.

You said it appeared to you the object of the meeting was a reform of parliament for the benefit of the poor?—I thought so at the first go off, or I should never have joined it.

You were not a man of those bad principles, were you?—I do not know what you may call bad principles.

You were not a man that would wish to overthrow the constitution, were you?—No, I absolutely was not never to overturn it; I think we never could have a better.

So I think too. Then you always were of that mind?—Yes, I was always of that principle.

That it would be better to reform our constitution by petitions to parliament to reform it, than to overthrow it?—Yes, but I never saw a design of that in our society.

You never saw a design to overturn the constitution?—No, I never saw any design, or the least motion moved to petition parliament for a reform.

How many times did you attend?—I cannot tell the number; but I dare say forty or fifty.

During all the time you met, what do you believe was the intention of these people?—I believed at the first go off, that it was for a reform; that a petition might be sent up to parliament, for a reform in parliament; then I perceived every thing that was to overthrow the constitution.

How soon did you find out this?—I forsook it as soon as ever I found it out.

When you found that they did not mean a petition to parliament, you determined to have nothing more to do with it after that?—No.

Then how came you ever to go again, when Mr. Walker, who was at the head of it, told you before, when you went there the second time, that he would overthrow the constitution by-and-by?—I did not conceive the word; I was not absolutely up to that word; I did not know the meaning of the word, till late,

So, when he asked you how the volunteers were going on, and you told him, very well, he said, we shall overthrow the constitution by-and-by; what did you think he meant?—I did not know what he meant; I thought we might have a reform; that was what I wanted.

You thought when Mr. Walker said, we shall overthrow the constitution by-and-by, that he meant a reform?—I did indeed, upon my oath.

When you heard him say, that he would think no more of cutting the king's head off, than he would of tearing a piece of paper, you still thought he was perfectly friendly to the constitution?—A letter was read with respect to the king of France; I did not know but he might be guilty? they had every information from France.

I am not talking of the king of France.—No, I am speaking that there were letters every night that the society met, coming from France. I thought he was perfectly right.

I am not speaking of the king of France, but of our king. When you heard Mr. Walker say, that he should think no more, as you tell us, of cutting the king of England's head off, than of tearing a piece of paper, how came you to go afterwards?—Many things might induce me.

You were always a friend to the king and constitution?—Yes, I always served his majesty, and will serve him still.

And always thought, till you left the society, that they were people that meant well to government, and meant to reform?—Yes.

You having served the king by sea and land, having fought for him, and being ready to fight for him again, how came you to go within the walls of that place, after hearing Mr. Walker make use of those expressions of him, and hearing those other persons talk in the manner you say that they did, of your own sovereign? You attended forty or fifty times after that, you say?—Suppose I did, perhaps I went there to learn? I do not know what I might do.

After you had been present, and heard, according to your own account, abominable treason against the chief magistrate of the country, your own gracious sovereign, you went there to learn, did you? Now when you heard Mr. Yorke say he was going through the three kingdoms, to know what force could be collected among the different societies, to bring in the French, and to aid them, if the French landed, how came you to go to this place as a lover of your king and country?—I own myself in a fault to attend them.

You said just now, you thought at first going off they were good people, and you never left them till you found the contrary; now did you leave them, did you voluntarily go and give any information about what you knew in this place, or did you not continue with the society as you began it, till you were taken up and put in custody?—I was not put in custody.

Were you taken up?—Yes.

You were arrested?—Yes.

Did you ever open your mouth, friend as you were to your king, and a lover of your country, after you heard these people damning the king every night for months, that the chairman stated he would go round and collect force to destroy his majesty, and bring in the French, did you ever utter one syllable of this till you were taken up and arrested?—I was arrested, but not put in custody.

Were you not carried before a magistrate?—I was; I will acknowledge every thing that is lawful and just.

So, all this time you were a perfect good friend to your king and country?—I had an opinion quite different a long time before.

In what?—Against what I saw; I did not like the French; I think if they were to come here, if we had the same as they are getting in France, we should be very bad.

So we all think; so you always did?—I did not always; not for some little time, a very little time.

I suppose you stayed in the society a great while after you saw all this?—No, I did not; there was one or another hanging after me to belong to the society.

Did not you stay in the society, and attend the meetings, till you were taken up for distributing a paper?—It was a considerable time before that.

Had you never given an account of any thing you are giving to-day, till after you was taken up and carried before a magistrate?—No.

You were never in prison?—No, never in my life.

Nor threatened to be imprisoned?—No.

What were you taken up for?—were not you threatened to be imprisoned for distributing a hand-bill, and were not you actually in custody?—What kind of hand-bill?

No matter what kind of hand-bill; were you not taken up and carried before Mr. Griffith?—Yes.

Do you mean to say you were never in prison upon that?—No, he gave me any liberty I chose.

Allowed you to go where you pleased?—Yes.

Then you never were committed, were you?—No.

Were not you in the New Bailey?—Yes.

How long?—A considerable time.

And yet not a prisoner?—I walked in and out as I pleased.

How came you to choose to be there; what were you there for?—I was in dread.

Of what?—Of the opposite party; I was in doubt whether they would not destroy me.

And so you walked out when you pleased?—Occasionally, when I saw my own opportunity.

You might have gone away where you would?—Certainly I might.

How much drink had you the day you got into prison, before you made your confession?—I might have some drink.

Who gave it you?—My own pocket.

It was your own money, was it?—Yes.

Nobody else gave you any?—No, upon my oath; that is plump.

Nobody gave you any shrub?—Not that day.

Who gave you the shrub the next day?—Suppose a gentleman was so friendly as to give me a glass of shrub, is that any thing?

I am not finding fault with it. Who was it?—I do not know whether that is to be answered or not.

Mr. *Law.*—Yes, it is.

Mr. *Erskine.*—I do not wish to press the gentleman.

I got a glass of shrub, certainly; I do not suppose that is any material matter.

Mr. Justice *Heath.*—You have nothing to do whether it is material or no; answer the question.

I got a glass of shrub from Mr. Griffith's house, to be sure.

Tell me whether I misunderstood you, or no, that you had served the king, you wish to serve him, you love him as every subject ought to love him, and that you heard all these expressions of danger to his authority mentioned in this place, then you must necessarily have thought Mr. Walker a very dangerous and wicked man from this?—I always thought him a good man.

Not after that, did you?—Yes.

What! after you heard him say that he would think no more of breaking the oath which he had sworn to the king, that you think him a good man after that; then you think him a good man now, perhaps?—I hope there may be a reformation in him.

You thought him then, no doubt, and think now, that he is a very wicked man; but you hope, as every good man, should, that there may be a reformation in him?—That is my hope.

Have you always been of that way of thinking; it is your wish he should reform; you are conscious of his wickedness; is that so? You know, if that be true, you have done nothing more than your duty to God and your country, in the oath you have taken to-day, and the oath you took before the grand jury, you know that.—I know that very well.

You know you are bound to do it by every thing that is sacred; if that be so, give me leave to ask you how you came to be desirous of asking pardon of Mr. Walker for having wronged him, for having sworn falsely against him, believing him to be what you tell my lord and these gentlemen now: you never perhaps asked him pardon for the oath you took before the grand jury?—Never in my life.

You never went down upon your knees before him, and begged for his forgiveness for the crimes which you had committed to his prejudice?—Never; nor I never will.

You never said, did you, that you could never sleep until you had done him justice, and that you were determined to go that night to find him out?—No, never in my life.

Then, of course, it is not true, that you went down upon your knees, that you wept, and held your hands before your face, when you confessed the perjury that you had committed?—I do not know what you may say; you may say just as you please.

It is all a falsehood, and an invention of mine. I came down here to insult you, and am keeping my word.—Yes.

You never said that Mr. Walker never had been guilty of any of those crimes that you had imputed to him?—No, I never did.

It is entirely false?—I allow it to be false, the greatest falsehood that ever was expressed in a court.

Have I understood you right, that three of them had damned the king, at the early parts of the meeting, Mr. Paul, Mr. Walker, and Mr. Jackson?—I do not recollect.

Then do you not recollect that Mr. Jackson or Mr. Paul, damn'd the king?—Yes, I do very well.

Mr. Collier damn'd the king?—Yes.

Let us hear what he said. Collier is a good deal given to swearing, is not he?—I never heard him in my life swear before that.

What did he say?—He came in, and walked round, and said, he is guillotined; damn him, and all kings! I wish they were all guillotined; I wish they were all served so, he said.

Thomas Dunn.—Re-examined by Mr. *Wood.*

Were you introduced to Mr. Walker and his brother at any time lately?—Yes, I was.

When was that?—It was, I think, a fortnight this day.

Who was it that brought you to them?—One Twiss.

Who is he?—He lives close by him.

Is he a servant of Mr. Walker's?—He works for him, I think.

When you were brought there to Mr. Walker, what did they say to you?—They did not say a great deal; only two or three words passed; Richard Walker said he wondered I should deviate from my former principles, what he had taken me to be.

Was there only Thomas Walker there, and Richard Walker, and Twiss?—I do not recollect any more. There were some words in the indictment, he said, that were not right, and I corrected them the next day.

You mean the information I suppose.

Mr. Serjeant *Cockell.* What has Richard Walker to do with Mr. Thomas Walker?

Mr. *Wood.* Was Mr. Thomas Walker there?—He was.

Mr. *Erskine.* I have no objection to your asking him any thing about Richard Walker.

Did you never go by the name of Litchfield?—No, never.

Where were these arms placed?—In the warehouse.

Mr. *Wood.* How high was the warehouse?—Three or four stories high.

At a considerable height?—Yes.

Could they shoulder their arms in it?—Yes.

Mr. *Erskine.* Pretty near as high as this place?—Not quite.

Thomas Kinnaston sworn.—Examined by Mr. *Topping.*

You are, I believe, the deputy-constable of Salford?—Yes.

And have been so some time?—Some years.

Do you remember at any time in the months of January and February last, watching about the house of Mr. Thomas Walker?—Yes, in the months of January and February 1793, I did.

You watched as a constable, for the purpose of seeing who went in and out there?—I did.

At what time of the night have you used to watch there?—I went a little after six, and generally stayed till nine.

Did you watch repeatedly during these months?—Yes, I went frequently, once or twice a week.

Upon the nights that you have used to watch there, once or twice a week, whom have you seen go into Mr. Walker's house?—I saw a great number that I did not know. I saw the late witness, Dunn, go in.

Have you seen M'Callum go in?—Yes.

Did you know John Smith?—No.

Do you know William Paul?—Yes, well.

Have you seen him go in?—Yes.

Have you seen Samuel Jackson?—Yes.

Cheetham?—Yes.

Oliver Pearsall?—Yes, I did not know him at that time; I have since known his name.

Benjamin Booth?—Yes.

Did you know Henry Yorke?—No.

Do you know Dr. Collier?—He lives next door to Mr. Walker.

You do not recollect whether you have seen him or not?—No.

Have you seen these people repeatedly go into Mr. Walker's upon the nights you have been watching?—I have, some of them many times.

Which door had they used to go in at?—At the front door.

Have you seen them come out?—Yes, I have seen them come out.

How had they used to come out?—At the same door.

How were they admitted?—A very gentle tap at the door; there appeared to me to be a servant attending at the door, who seemed to know their faces perfectly well.

How long had they used to remain there?—From the time I saw them go in, to the time of their coming out, has been more than two hours; they sometimes came out and went in again.

And sometimes stayed a longer, sometimes a shorter time, I suppose?—Yes.

Have you seen various other persons besides the persons you mentioned, go there?—I saw a great number of persons whom I did not know.

How many in number do you think you

have seen go in of an evening?—I believe I have seen more than fifty.

Were these tradesmen of the town that you were acquainted with, or of the lower class of people?—A great majority seemed to be of the lower class of people; they appeared to me a great majority to be mechanics of the lower order.

Did you never see them come in or go out at any door but at the front door?—I have seen people come out, but they might be his servants out of the warehouse, come out of the back door.

You have seen people come out at the back door?—I have, but they might be Mr. Walker's servants for aught I know.

Thomas Kinnaston—cross-examined by Mr. Serjeant *Cockell*.

Did you ever knock at the door?—I never did.

Where might you stand at this time—you are rather hard of hearing?—I am.

How did you hear this very gentle tap?—I was not deaf then.

Were you close to the door?—There was a wall close to the door; I leaned against that wall frequently.

Did you know the persons of these men—had you seen them before?—Yes many times.

Where had you seen them before?—Frequently in the streets.

Do not you know they had their clubs at public-houses, and till they got a room, it was held at Mr. Walker's?—I never saw them at the public-houses; I believe I should not have been admitted.

Were those persons that you saw go into Mr. Walker's house, members of the club?—I believe they were.

They were prevented holding the clubs at the public-houses?—I do not know that.

You must know that.—No, I was not present.

Have not you seen the public advertisements appearing in the papers?—I have.

Do not you know that these clubs were transferred to Mr. Walker's house, till they could find some place at which to meet?—I do not upon my word; I know the landlords signed their names in the public papers, that they would not admit such clubs, but I know nothing of the adjournments.

Do not you know, that after the landlords had so refused to receive them, at the desire of the magistrates, that they met at a private house, which was attacked by a mob and in a great measure destroyed?—No, I do not.

Thomas Kinnaston.—re-examined by Mr. *Topping*.

You had not an opportunity, from the situation in which you was out of doors, of observing any thing that was going on above stairs?—No; Mr. Walker's warehouse windows are in the yard at the back part of the house.

DEFENCE.

The Hon. *Thomas Erskine.**—Gentlemen of the Jury; I listened with the greatest attention (and in honour of my learned friend I must say with the greatest approbation) to much of his address to you in the opening of this cause;—it was candid and manly, and contained many truths which I have no interest to deny; one in particular which involves in it indeed the very principle of the defence,—the value of that happy constitution of government which has so long existed in this island. I hope that none of us will ever forget the gratitude which we owe to the Divine Providence, and, under its blessing, to the wisdom of our forefathers, for the happy establishment of law and justice under which we live; and under which, thank God, my clients are this day to be judged: great indeed will be the condemnation of any man who does not feel and act as he ought to do upon this subject; for surely if there be one privilege greater than another which the benevolent Author of our being has been pleased to dispense to his creatures since the existence of the earth which we inhabit, it is to have cast our lots in this age and country:—for myself, I would in spirit prostrate myself daily and hourly before Heaven to acknowledge it; and instead of coming from the house of Mr. Walker, and accompanying him at Preston (the only truths which the witness has uttered since he came into court), if I believed him capable of committing the crimes he is charged with, I would rather have gone into my grave than have been found as a friend under his roof.

Gentlemen, the crime imputed to the defendant is a serious one indeed:—Mr. Law has told you, and told you truly, that this indictment has not at all for its object to condemn or to question the particular opinions which Mr. Walker and the other defendants may entertain concerning the principles of this government, or the reforms which the wisest governments may from time to time require: he is indeed a man of too enlarged a mind to think for a moment that his country can be served by interrupting the current of liberal opinion, or overawing the legal freedom of English sentiment by the terrors of criminal prosecution: he openly disavows such a system, and has, I think, even more than hinted to us that there may be seasons when an attention to reform may be salutary, and that every individual under our happy establishment has a right upon this important subject to think for himself.

The defendants therefore are not arraigned before you, nor even censured in observation, for having associated at Manchester to promote what they felt to be the cause of reli-

* I have, as on former occasions, availed myself of the report of this speech published in the 2nd edition of "Erskine's Speeches."

gious and civil liberty;—nor are they arraigned or censured for seeking to collect the sentiments of their neighbours and the public concerning the necessity of a reform in the constitution of parliament; these sentiments and objects are wholly out of the question: but they are charged with having unlawfully confederated and conspired to destroy and overthrow the government of the kingdom by open force and rebellion, and that to effect this wicked purpose they exercised the king's subjects with arms, perverting that which is our birthright, for the protection of our lives and property, to the malignant purpose of supporting the enemies of this kingdom in case of an invasion: in order, as my friend has truly said (for I admit the consequence if the fact be established), in order to make our country that scene of confusion and desolation which fills every man's heart with dismay and horror, when he only reads or thinks of what is transacting at a distance upon the bloody theatre of the war that is now desolating the world.—This, and nothing different or less than this, is the charge which is made upon the defendants, at the head of whom stands before you a merchant, of honour, property, character, and respect;—who has long enjoyed the countenance and friendship of many of the worthiest and most illustrious persons in the kingdom, and whose principles and conduct have more than once been publicly and gratefully acknowledged by the community of which he is a member, as the friend of their commerce and liberties, and the protector of the most essential privileges which Englishmen can enjoy under the laws.

Gentlemen, such a prosecution against such a person ought to have had a strong foundation: putting private justice and all respect of persons wholly out of the question, it should not, but upon the most clear conviction and the most urgent necessity, have been instituted at all.—We are at this moment in a most awful and fearful crisis of affairs;—we are told authentically by the sovereign from the throne, that our enemies in France are meditating an invasion, and the kingdom from one end to another is in motion to repel it—In such a state of things, and when the public transactions of government and justice in the two countries pass and repass from one another as if upon the wings of the wind, is it politic to prepare this solemn array of justice upon such a dangerous subject, without a reasonable foundation, or rather without an urgent call? At a time when it is our common interest that France should believe us to be, what we are and ever have been, one heart and soul to protect our country and our constitution—is it wise or prudent, putting private justice wholly out of the question, that it should appear to the councils of France (apt enough to exaggerate advantages) that the judge representing the government in the northern district of this kingdom should be sitting here in judgment in the presence of all the gentlemen whose property lies in this great county, to trace and to punish the existence of a rebellious conspiracy to support an invasion from France?—a conspiracy not existing in a single district alone, but maintaining itself by criminal concert and correspondence in every district, town, and city in the kingdom;—projecting nothing less than the utter destruction and subversion of the government.—Good God! can it be for the interest of government that such an account of the state of this country should go forth? Unfortunately, the rumour and effect of this day's business will spread where the evidence may not travel with it, to serve as an antidote to the mischief; for certainly the scene which we have this day witnessed can never be imagined in France or in Europe, where the spirit of our law is known and understood;—it never will be credited that all this serious process has no foundation either in fact or probability, and that it stands upon the single evidence of a common soldier, or rather a common *vagabond*, discharged as unfit to be a soldier;—of a wretch, lost to all reverence for God and religion, who *avows*, that he has none for either, and who is incapable of observing even common decency as a witness in the court:—this will never be believed; and the country, whose best strength at home and abroad is the soundness of all its members, will suffer from the very credit which government will receive for the justice of this proceeding.

What then can be more beneficial than that you should make haste, as public and private men, to undeceive the world, to do justice to your fellow-subjects, and to vindicate your country?—what can be more beneficial, than that you, as honest men, should upon your oaths pronounce and record by your verdict, that, however Englishmen may differ in religious opinions, which in such a land of thinking ever must be the case;—that however they may separate in political speculations as to the wisest and best formation of a House of Commons;—that though some may think highly of the church and its establishment, whilst others, but with equal sincerity, prefer the worship of God with other ceremonies, or without any ceremonies;—that though some may think it unsafe to touch the constitution at this particular moment, and some, that at no time it is safe to touch it, while others think that its very existence depends upon immediate reformation:—*what*, I repeat, can be more beneficial, than that your verdict should establish, that though the country is thus divided upon these political subjects, as it ever has been in every age and period of our history, yet that we all recollect our duty to the land which our fathers have left us as an inheritance;—that we all know and feel we have one common duty and one common interest? This will be the language of your verdict, whatever you

end for ever to all divisions upon religious subjects, and to make us all, what I look forward yet to see, one harmonious body, living like one family together. It is also well remembered with what zeal and eloquence that great question was managed in the House of Commons by Mr. Fox, and the large majority with which the repeal of the Test Acts was rejected; it seems therefore strange that the period of this rejection should be considered as an era either of danger to the church or of religious triumph to Christians; nevertheless, a large body of gentlemen and others at Manchester, whose motives I am far from wishing to scrutinize or condemn, considered this very wish of the dissenters as injurious to their rights, and as dangerous to the church and state;—they published advertisements expressive of these sentiments, and the rejection of the bill in the Commons produced a society styled the Church and King Club, which met for the first time to celebrate what they called the glorious decision of the House of Commons in rejecting the prayer of their dissenting brethren.

Gentlemen, it is not for me to say, that it was unjust or impolitic in parliament to reject the application; but surely I may without offence suggest, that it was hardly a fit subject of triumph, that a great number of fellow-subjects, amounting, I believe, to more than a million in this country, had miscarried in an object which they thought beneficial, and which they had a most unquestionable right to submit to the government under which they lived; yet for this cause alone (France and every other topic of controversy being yet unborn) the church and king were held forth to be in danger; a society was instituted for their protection, and a uniform appointed with the church of Manchester upon the button.

Gentlemen, without calling for any censure upon this proceeding, but leaving it to every man's own reflection, is it to be wondered at or condemned, that those who thought more largely and liberally on subjects of freedom, both civil and religious, but who found themselves persecuted for sentiments and conduct the most avowedly legal and constitutional, should associate for the support of their rights and privileges as Englishmen, and assemble to consider how they might best obtain a more adequate representation of the people of Great Britain in parliament?

Gentlemen, this society continued with these objects in view until the issuing of the proclamation against Republicans and Levellers, calling upon the magistrates to exert themselves throughout the kingdom to avert some danger with which, it seems, our rulers thought this kingdom was likely to be visited. Of this danger, or the probability of it, either generally or at Manchester in particular, my learned friend has given no evidence from any quarter but that of Mr. Dunn;—he has not proved that there has been in any one part of the kingdom any thing which could lead government to apprehend that meetings existed for the purposes pointed at:—but that is out of the question;—government had a right to think for itself, and to issue the proclamation.—The publicans however (as it appears upon the cross-examination of the witness), probably directed by the magistrates, thought fit to shut up their houses opened by immemorial law to all the king's subjects, and to refuse admission to all the gentlemen and tradesmen of the town who did not associate under the banners of this Church and King Club.—This illegal proceeding was accompanied with an advertisement containing a vehement libel against all those persons, who, under the protection of the laws, thought themselves as much at liberty to consider their various privileges, as others were to maintain the establishment of the church.—Upon this occasion Mr. Walker honourably stood forth, and opened his house to this Constitutional Society at a time when they must otherwise have been in the streets by a combination of the publicans to reject them.—Now, gentlemen, I put it to you as men of honour, whether it can be justly attributed to Mr. Walker as seditious, that he opened his house to a society of gentlemen and tradesmen, whose good principles he was acquainted with,—who had been wantonly opposed by this Church and King Club, whose privileges they had never invaded or questioned,—and against whom, in this day of trial, there is no man to be found who can come forward to impeach any thing they have done, or a syllable they have uttered. Vehement as the desire most apparently has been, to bring this gentleman and his associates, as they are called, to justice, yet not one magistrate,—no man of property or figure in this town or its neighbourhood,—no person having the king's authority in the country, has appeared to prove one fact or circumstance from whence even the vaguest suspicion could arise, that any thing criminal had been intended or transacted:—no constable, who had ever been sent to guard, lest the peace might be broken, or to make inquiries for its preservation? not a paper seized throughout England, nor any other prosecution instituted except upon the unsupported evidence of the same miserable wretch who stands before you:—the town, neighbourhood, and county, remaining in the same profound state of tranquillity as it is at the moment I am addressing you.

Gentlemen, when parliament assembled at the end of 1792, previous to the commencement of the war, these unhappy differences were suddenly (and, as you will see, from no fault of Mr. Walker's) brought to the crisis which produced this trial:—a meeting was held in Manchester to prepare an address of thanks to the king for having embodied the militia during the recess of parliament, and for having put the kingdom into a posture of defence; I do not seek to question the mea-

sure of government which gave rise to this approbation or the approbation itself which the approvers had a right to bestow; but others had an equal right to entertain other opinions. On all public measures the decision undoubtedly is with government; but the people at the same time have a right to think upon them, and to express what they think; surely war, of all other subjects, is one which the people have a right to consider; surely it can be no offence for those whose properties are to be taxed, and whose inheritances are to be lessened by it, to pause a little upon the eve of a contest, the end of which no man can foresee,—the expenses of which no man can calculate, or estimate the blood to flow from its calamities.—Surely it is a liberty secured to us by the first principles of our constitution, to address the sovereign, or instruct our representatives, to avert the greatest evil that can impend over a nation.

Gentlemen, one of those societies, called the Reformation Society, met to exercise this undoubted privilege, and in my mind upon the fittest occasion that ever presented itself; yet mark the moderation of Mr. Walker, whose violence is arraigned before you.—Though he was no member of that body, and though he agreed in the propriety of the measure in agitation, yet he suggested to them, that their opposition might be made a pretence for tumult,—that tranquillity in such a crisis, was by every means to be promoted, and therefore advised them to abstain from the meeting; so that the other meeting was left to carry its approbation of government and of the war, without a dissenting voice.—If ever therefore there was a time when the church and king might be said to be out of danger at Manchester, it was at this moment:—yet *on this very day* they hoisted the banners of alarm to both;—they paraded with them through every quarter of the town;—mobs by degrees were collected, and in the evening of this very eleventh of December, the houses of Mr. Walker and others were attacked. You will observe, that *before this day* no man has talked about arms at Mr. Walker's:—if an honourable gentleman upon the jury who has been carefully taking notes of the evidence, will have the goodness to refer to them, he will find that it was not till near a week after this (so Dunn expresses it) that a single firelock had been seen; nor indeed does any part of the evidence go back beyond this time, when Mr. Walker's house was thus surrounded and attacked by a riotous and disorderly mob. He was aware of the probable consequences of such an attack;—he knew, by the recent example of Birmingham, what he and others professing sentiments of freedom had to expect;—he therefore got together a few fire-arms, which he had long had publicly by him, and an inventory of which, with the rest of his furniture at Barlow Hall, had been taken by a sworn appraiser, long before any thing connected with this indictment had an existence; and with these, and the assistance of a few steady friends, he stood upon his defence. He was advised indeed to retire for safety; but knowing his own innocence, and recollecting the duty he owed to himself, his family, and the public, he declared he would remain there, to support the laws and to defend his property,—and that he would perish, rather then surrender those privileges, which every member of the community is bound, both from interest and duty, to maintain.—To alarm the multitude, he fired from the windows over their heads, and dispersed them; but when, the next morning, they assembled in very great numbers before his house, and when a man got upon the churchyard wall, and read a most violent and inflammatory paper, inciting the populace to pull the House down, Mr. Walker went out amongst them, and expostulated with them, and asked why they had disgraced themselves so much by attacking him the night before; adding, that if he had done any of them, or any person whom they knew, any injury, he was, upon proof of it, ready to make them every satisfaction in his power:—he also told them, that he had fired upon them the night before, because they were mad as well as drunk; that, if they attacked him again, he would, under the same circumstances, act as he had done before; but that he was then alone and unarmed in the midst of them; and if he had done any thing wrong, they were then sober, and had him completely in their power.

Gentlemen, this was most meritorious conduct. You all live at a distance from the metropolis, and were probably, therefore, fortunate enough neither to be within or near it in 1780, when, from beginnings smaller than those which exhibited themselves at Birmingham, or even at Manchester, the metropolis of the country, and with it the country itself, had nearly been undone: the beginning of these things is the season for exertion: I shall never indeed forget what I have heard the late mild and venerable magistrate lord Mansfield say upon this subject, whose house was one of the first attacked in London; I have more than once heard him say, that perhaps some blame might have attached upon himself and others in authority, for their forbearance in not having directed force to have been *at the first moment* repelled by force, it being the highest humanity to check the infancy of tumults.

Gentlemen, Mr. Walker's conduct had the desired effect: he watched again on the 13th of December, but the mob returned no more, and the next morning the arms were locked up in a bedchamber in his house, where they have remained ever since, and where, of course, they never could have been seen by the witness, *whose whole evidence commences above a week subsequent to the 11th of December, when they were finally put aside.* This is

the genuine history of the business; and it must therefore not a little surprise you, that when the charge is wholly confined to the use of arms, Mr. Law should not even have hinted to you that Mr. Walker's house had been attacked, and that he was driven to stand upon his defence, as if such a thing had never had an existence;—indeed the armoury which must have been exhibited in such a statement, would have but ill suited the indictment or the evidence, and I must therefore undertake the description of it myself.

The arms having been locked up, as I told you, in the bedchamber, I was shown last week into this house of conspiracy,—treason,—and death, and saw exposed to view the mighty armoury which was to level the beautiful fabric of our constitution, and to destroy the lives and properties of ten millions of people.—It consisted, first, of six little swivels purchased two years ago at the sale of Livesey, Hargrave, and Co. (of whom we have all heard so much), by Mr. Jackson, a gentleman of Manchester, who is also one of the defendants, and who gave them to master Walker, a boy about ten years of age;—swivels, you know, are guns so called because they turn upon a pivot; but these were taken off their props, were painted, and put upon blocks resembling carriages of heavy cannon, and in that shape may be fairly called children's toys; you frequently see them in the neighbourhood of London adorning the houses of sober citizens, who, strangers to Mr. Brown and his improvements, and preferring grandeur to taste, place them upon their ramparts at Mile-End or Islington. Having, like Mr. Dunn (I hope I resemble him in nothing else), having, like him, served his majesty as a soldier (and I am ready to serve again if my country's safety should require it), I took a closer review of all I saw, and observing that the muzzle of one of them was broke off, I was curious to know how far this famous conspiracy had proceeded, and whether they had come into action, when I found the accident had happened on firing a *feu de joie* upon his majesty's happy recovery, and that they had been afterwards fired upon the prince of Wales's birth-day. These are the only times, that, in the hands of these conspirators, these cannon, big with destruction, had opened their little mouths;—once to commemorate the indulgent and benign favour of Providence in the recovery of the sovereign, and once as a congratulation to the heir apparent of his crown on the anniversary of his birth.

I went next, under the protection of the master-general of this ordnance (Mr. Walker's chamber-maid), to visit the rest of this formidable array of death, and found a little musketoon about so high [describing it]; I put my thumb upon it, when out started a little bayonet like a Jack-in-a-box which we buy for children at a fair; in short, not to weary you, gentlemen, there was just such a parcel of arms of different sorts and sizes as a man collecting amongst his friends, for his defence against the sudden violence of a riotous multitude, might be expected to have collected: here lay three or four rusty guns of different dimensions, and here and there a bayonet or broad-sword, covered over with dust and rust, so as to be almost undistinguishable; for, notwithstanding what this infamous wretch has sworn, we will prove by witness after witness, till you desire us to finish, that they were principally collected on the 11th of December, the day of the riot, and that from the 12th in the evening, or the 13th in the morning, they have lain untouched, as I have described them;—that their use began and ended with the necessity, and that, from that time to the present, there never has been a fire-arm in the warehouse of any sort or description. This is the whole on which has been built a proceeding that might have brought the defendants to the punishment of death, for both the charge and the evidence amount to high treason,—high treason, indeed, under almost every branch of the statute; since the facts amount to levying war against the king—by a conspiracy to wrest by force the government out of his hands,—to an adherence to the king's enemies,—and to a compassing of his death, which is a necessary consequence of an invading army of republicans or of any other enemies of the state;—yet notwithstanding the notoriety of these facts, the un-named prosecutors (and indeed I am afraid to slander any man or body of men, by even a guess upon the subject) have been beating up as for volunteers, to procure another witness to destroy the lives of the gentlemen before you, against many of whom warrants for high treason were issued to apprehend them; Mr. Walker, among the rest, was the subject of such a warrant, and as soon as he knew it, he behaved (as he has throughout, like a man and an Englishman;—he wrote immediately to the secretary of state, who was summoned here to-day, and whose absence I do not complain of, because we have by consent the benefit of his testimony;—he wrote three letters to Mr. Dundas, one of which was delivered by Mr. Wharton, informing him that he was in London on his business as a merchant;—that if any warrant had been issued against him, he was ready to meet it, and for that purpose delivered his address where it might be executed. This Mr. Walker did when the prosecutors were in search of another witness, and when this Mr. Dunn was walking like a tame sparrow through the New Bailey, fed at the public or some other expense, and suffered to go at large, though arrested upon a criminal charge, and sent into custody under it.

And to what other circumstances need I appeal for the purity of the defendants, than that, under the charge of a conspiracy, extensive enough to comprehend in its transac-

tions (if any existed) the whole compass of England, the tour of which was to have been made by Mr. Yorke, there has not been *one man* found to utter a syllable about them, *no not one man*, thanks be to God, who has so framed the characteristics of Englishmen, except the solitary infamous witness before you, who, from what I heard since I began to address you, may have spoken the truth when he claimed my acquaintance, as I have reason to think he has seen me before *in a criminal court of justice.*

Having now, for the satisfaction of the defendants rather than from the necessity of the case, given you an account of their whole proceedings, as I shall establish them by proof; let us examine the evidence that has been given against them, and see how the truth of it could stand with reason or probability, supposing it to have been sworn to by a witness the most respectable.

According to Dunn's own account, Mr. Walker had not been at the first meeting, so that when he first saw Dunn he did not know either his person or his name; he might have been a spy (God knows there are enow of them), and at that season in particular, informers were to be expected:—Mr. Walker is supposed to have said to him, "What is your business here?" to which he answered, "I am going to the society," which entitled him at once to admission without farther ceremony;—there was nobody to stop him:—was he asked his name?—was he balloted for?—was he questioned as to his principles? No, he walked in at once; but first, it seems, Mr. Walker, who had never before seen him, inquired of him the news from Ireland (observing by his voice that he was an Irishman), and asked what the volunteers were about, as if Mr. Walker could possibly suppose that such a person was likely to have been in a correspondence with Ireland, which told him more than report must have told every body else. Mr. Dunn tells you indeed he was no such person, he was a friend, as he says, to the king and constitution, which Mr. Walker would have found by asking another question; but, without farther inquiry, he is supposed to have said to him at once, "We shall overthrow the constitution by and by;" which the moment Dunn had heard, up walked that affectionate subject of our sovereign lord the king into Mr. Walker's house, where the constitution was to be so overthrown; but then he tells you he thought there was no harm to be done, that it was only for the benefit of the poor and the public good;—but how could he think so after what he had that moment heard? but he did not know, it seems, what Mr. Walker meant. Gentlemen, do you collect, from Mr. Dunn's discourse and deportment to-day, that he could not tell but that a man meant good when he had heard even him express a *wish* to overthrow the government? would you pull a feather out of a sparrow's wing upon the oath of a man, who swears that he believed a person to have been a good subject in the very moment he was telling him of an intended rebellion? But why should I fight a phantom with argument?—Could any man but a driveller, have possibly given such an answer as is put into Mr. Walker's mouth, to a man he had never seen in his life? However many may differ from Mr. Walker in opinion, every body, I believe, will admit, that he is an acute, intelligent man, with an extensive knowledge of the world, and not at all likely to have conducted himself like an ideot. What follows next?—another night he went into the warehouse, where he saw Mr. Yorke called to the chair, who said he was going the tour of the kingdom, in order to try the strength of the different societies, to join fifty-thousand men that were expected to land from France in this country, and that Mr. Walker then said, "Damn all kings—I know our king has seventeen millions of money in the bank of Vienna, although he won't afford any of it to the poor." Gentlemen, is this the language of a man of sense and education? If Mr. Walker had the malignity of a demon, would he think of giving effect to it by such a senseless lie?—When we know that, from the immense expense attending his majesty's numerous and illustrious family, and the great necessities of the state, he has been obliged over and over again to have recourse to the generosity and justice of parliament to maintain the dignity of the crown; could Mr. Walker ever have thought of inventing this nonsense about the bank of Vienna, when there is a bank too in our own country, where he might legally invest his property for himself and his heirs? But Mr. Walker did not stop there;—he went on and said, "I should think no more of taking off the king's head than I should of tearing this piece of paper." All this happened soon after his admission; yet this man, who represents himself to you upon his oath this day, as having been uniformly a friend to the constitution, as far as he understood it;—as having left the society as soon as he saw their mischievous inclinations,—and as having *voluntarily* informed against them, I say *this same friend of the constitution* tells you, almost in the same breath, that he continued to attend their meetings from thirty to forty times, *where high treason was committing with open doors;* and that, instead of giving information of his own free choice, he was arrested in the very act of distributing some seditious publication.

Gentlemen, it is really a serious consideration, that upon *such testimony* a man should even be put upon his defence in the courts of this country;—upon such principles what man is safe? I was indeed but ill at ease myself when Mr. Dunn told me he knew me better than I supposed.—What security have I at this moment that he should not swear that he had met me under some gateway in Lancaster, and that I had said to him, "Well,

Dunn, I hope you will not swear against Mr. Walker, but that you will stick to the good cause; damn all kings: damn the constitution:"—if the witness were *now* to swear this, into gaol I must go; and if my client is in danger from what has been sworn against *him*, what safety would there be for *me*?—the evidence would be equally positive, and I am equally an object of suspicion as Mr. Walker: it is said of *him*, that he has been a member of a society for the reform of parliament; so have *I*, and so am *I* at this moment, and so at all hazards I will continue to be, and I will tell you why, gentlemen—because I hold it to be essential to the preservation of all the ranks and orders of the state,—alike essential to the prince and to the people: I have the honour to be allied to his majesty in blood, and my family has been for centuries a part of what is now called the aristocracy of the country; I can therefore have no interest in the destruction of the constitution.

In pursuing the probability of this story (since it must be pursued), let us next advert to whether any thing appears to have been done in other places which might have been exposed by this man's information. The whole kingdom is under the eye and dominion of magistracy, awakened at that time to an extraordinary vigilance; yet has any one man been arrested even upon the suspicion of any correspondence with the societies of Manchester, good, bad, or indifferent? or has any person within the four seas come to swear that any such correspondence existed? So that you are desired to believe, upon Mr. Dunn's single declaration, that gentlemen of the description I am representing, without any end or object, or concert with others, were resolved to put their lives into the hands of any miscreant who might be disposed to swear them away, by holding public meetings of conspiracy with open doors, and in the presence of all mankind, liable to be handed over to justice every moment of their lives, since every tap at the door might have introduced a constable as readily as a member; and, to finish the absurdity, these gentlemen are made to discourse in a manner that would disgrace the lowest and most uninformed classes of the community.

Let us next see *what interest* Mr. Walker has in the proposed invasion of this peaceable country: has Mr. Law proved that Mr. Walker had any reason to expect protection from the French from any secret correspondence or communication more than you or I have, or that he had prepared any means of resisting the troops of this country?—how was he to have welcomed these strangers into our land?—what, with this dozen of rusty muskets, or with those conspirators whom he exercised?—but who are they?—they are, it seems, as my learned friend who drew this indictment has called them, "to the jurors unknown," and he might have added, *who will ever remain unknown to them.*—But has Mr. Walker nothing to lose, like other men who dread an invasion? He has long had the acquaintance and friendship of some of the best men in this kingdom, who would be destroyed if such an invasion should take place.—Has he, like other men, no ties of a nearer description?—Alas, gentlemen! I feel at this moment that he has many: Mr. Dunn told you that I was with Mr. Walker at Manchester; and it enables me to say, of my own knowledge, that it is impossible he could have had the designs imputed to him.—I have been under his roof, where I have seen him the husband of an amiable and affectionate woman, and the happy parent of six engaging children; and it hurts me not a little to think what they must feel at this moment.—Before prosecutions are set on foot, those things ought to be considered;—we ought not, like the fool in the Proverbs, to scatter firebrands and death, and say, "Am I not in sport?" Could we look at this moment into the dwelling of this unfortunate gentleman, for so I must call him, I am persuaded the scene would distress us;—his family cannot but be unhappy;—they have seen prosecutions equally unjust as even this is, attended with a success of equal injustice, and we have seen those proceedings, I am afraid by those who are at the bottom of this indictment, put forward for your imitation. I saw to my astonishment, at Preston, where, as a traveller, I called for a newspaper, that this immaculate society (the Manchester Church and King Club) had a meeting lately, and had published to the world the toasts and sentiments which they drank; some of them I like: some of them deserve reprobation: "The Church and King;" very well. "The Queen and Royal Family;" be it so. "The Duke of York and the Army;" be it so. But what do you think came next?

[Here Mr. Justice Heath interrupted Mr. Erskine, by saying, "We are not to go into this, of which you cannot give evidence."]

Mr. *Erskine.*—I do not know what effect these publications may have upon the administration of justice; why drink "*The Lord Advocate and the Court of Justiciary in Scotland,*"* just when your lordship is called upon to administer justice according to the laws of *England;* if I had seen the king and his judges upon the northern circuit published as a toast——

Mr. Justice *Heath.*—You know you cannot give this in evidence.

Mr. *Erskine.*—Gentlemen, considering the situation in which my clients stand at this moment, I expressed the idea which occurred to me, and which I thought it right not to suppress:—but let it pass;—this is not the moment for controversy;—it is my interest to submit to any course his lordship may think proper to dictate; the evidence is more than enough for my purpose;—so mainly improbable, so contrary to every thing in the

* See the preceding cases.

course of human affairs, that I know you will reject it, even if it stood unanswered; what then will you say, when I shall prove to you by the oaths of the various persons who attended these societies, that no propositions of the sort insinuated by this witness ever existed;—that no hint, directly or indirectly, of any illegal tendency, was ever whispered;—that their real objects were just what were *openly professed*, be they right or wrong, be they wise or mistaken, namely, *reformation in the constitution of the House of Commons*, which my learned friend admitted they had a right by constitutional means to promote.—This was their object; they neither desired to touch the king's authority, nor the existence or privileges of the House of Lords; but they wished that those numerous classes of the community, who (by the law as it now stands) are excluded from any share in the choice of members to the parliament, should have an equal right with others, in concerns where their interests are equal. Gentlemen, this very county furnishes a familiar instance; there are, I believe, at least thirty thousand freeholders in Lancashire, each of whom has a vote for two members of parliament; and there are two boroughs within it (if I mistake not), Clithero and Newton, containing a handful of men who are at the beck of *two individuals*; yet these two little places send for themselves, *or rather for these two persons*, two members each, which makes four against the whole power and interest of this county in parliament, touching any measure, how deeply soever it may concern their prosperity. Can there be any offence in meeting together to consider of a representation to parliament, suggesting the wisdom of alteration and amendment in such a system?

Mr. Justice *Heath*.—There can be no doubt but that a petition to parliament, for reform or any thing else, can be no offence.

Mr. *Erskine*. Gentlemen, I expected this interruption from the learning of the judge; certainly it can be no offence, and consequently my clients can be no offenders.

Having now exposed the weakness of Dunn's evidence, from its own intrinsic defects, and from the positive contradiction every part of it is to receive from many witnesses, I shall conclude with the still more positive and unequivocal contradiction which the whole of it has received from Dunn himself. You remember that I repeatedly asked him whether he had not confessed that the whole he had sworn to-day was utterly false; whether he had not confessed it to be so with tears of contrition, and whether he had not kneeled down before Mr. Walker, to implore his forgiveness. My learned friend, knowing that this would be proved upon him, made a shrewd and artful observation, to avoid the effects of it;—he said, that such things had fallen often under the observation of the Court upon the circuit, where witnesses had been drawn into similar snares by artful people to invalidate their testimony;—this may be true, but the answer to its application is, that not only the witness himself has positively denied that any such snare was laid for him, but the witnesses I have to call, both in respect of number and credit, will put a total end to such a suggestion. If I had indeed but one witness, my friend the attorney-general might undoubtedly put it to you in reply, whether his or mine, was to be believed; but I will call to you, *not one* but *four or five*; or, if necessary, *six witnesses*, ABOVE ALL SUSPICION, in whose presence Dunn voluntarily confessed the falsehood of his testimony, and, with tears of apparent repentance, offered to make any reparation to these injured and unfortunate defendants. This I pledge myself to prove to your satisfaction.

Gentlemen, the object of all public trial and punishment is the security of mankind in social life. We are not assembled here for the purposes of vengeance, but for the ends of justice;—to give tranquillity to human life, which is the scope of all government and law;—you will take care therefore, how, in the very administration of justice, you disappoint that which is the very foundation of its institution;—you will take care, that in the very moment you are trying a man as a disturber of the public happiness, you do not violate the rules which secure it.

The last evidence I have been stating ought by itself to put an instant end to this cause: I remember a case, very lately, which was so brought to its conclusion, where, upon a trial for perjury of a witness who had sworn against a captain of a vessel in the African trade, it appeared that the witnesses, who swore to the perjury against the defendants, had themselves made deliberate declarations, which materially clashed with the testimony they were giving; lord Kenyon, who tried the cause, would after this proceed no farther, and asked me, who was counsel for the prosecution, whether I would urge it farther; saying emphatically, what I hope every judge under similar circumstances will think it his duty to say also, "No man ought or can be convicted in England, unless the judge and the jury have *a firm assurance* that innocence cannot by any possibility be the victim of falsehood and injustice." And how can the jury or his lordship have that assurance here, when the only source of it is brought into such serious doubt and question? Upon the whole, then, I cannot help hoping, that my friend the attorney-general, when he shall hear my proofs, will feel that a prosecution like this ought not to be offered for the seal and sanction of your verdict. Unjust prosecutions lead to the ruin of all governments. Whoever will look back to the history of the world in general, and of our own particular country, will be convinced, that exactly as prosecutions have been cruel and oppressive, and maintained by inadequate and unrighteous evidence, in the same proportion, and by the

same means, their authors have been destroyed instead of being supported by them. As often as the principles of our ancient laws have been departed from in weak and wicked times, so often the governments that have violated them have been suddenly crumbled into dust; and therefore wishing, as I most sincerely do, the preservation and prosperity of our happy constitution, I desire to enter my protest against its being supported by means that are likely to destroy it. Violent proceedings bring on the bitterness of retaliation, until all justice and moderation are trampled down and subverted;—witness those sanguinary prosecutions previous to the awful period in the last century, when Charles the first fell: that unfortunate prince lived to lament those vindictive judgments by which his impolitic, infatuated followers imagined they were supporting his throne:—he lived to see how they destroyed it;—his throne, undermined by violence, sunk under him; and those who shook it were guilty in their turn (such is the natural order of injustice) not only of similar but of worse and more violent wrongs; witness the fate of the unhappy earl of Strafford, * who, when he could not be reached by the ordinary laws, was impeached in the House of Commons, and who, when still beyond the consequences of that judicial proceeding, was at last destroyed *by the arbitrary wicked mandate of the legislature.* James the second lived to ask assistance in the hour of his distress, from those who had been cut off from the means of giving it by unjust prosecutions; he lived to ask support from the earl of Bedford after his son, the unfortunate lord Russell,† had fallen under the axe of injustice: "I once had a son," said that noble person, "who could have served your majesty upon this occasion," but there was then none to assist him.

I cannot possibly tell how others feel upon these subjects, but I do know how it is their interest to feel concerning them; we ought to be persuaded that the only way by which government can be honourably or safely supported, is by cultivating the love and affection of the people;—by showing them the value of the constitution by its protection;—by making them understand its principles by the practical benefits derived from them;—and above all, by letting them feel their security in the administration of law and justice.—What is it in the present state of that unhappy kingdom, the contagion of which fills us with such alarm, that is the just object of terror?—what, but that accusation and conviction are the same, and that a false witness or power without evidence is a warrant for death! Not so here;—long may the countries differ! and I am asking for nothing more than that you should decide according to our own wholesome rules, by which our government was established, and by which it has been ever protected.—Put yourselves, gentlemen, in the place of the defendants, and let me ask, if you were brought before your country, upon a charge supported by no other evidence than that which you have heard to-day, and encountered by that which I have stated to you, what would you say, or your children after you, if you were touched in your persons or your properties by a conviction?—may you never be put to such reflections, nor the country to such disgrace! The best service we can render to the public is, that we should live like one harmonious family, that we should banish all animosities, jealousies, and suspicions of one another; and that, living under the protection of a mild and impartial justice, we should endeavour with one heart, according to our best judgments, to advance the freedom and maintain the security of Great Britain.

Gentlemen, I will trouble you no farther; I am afraid indeed I have too long trespassed on your patience, I will therefore proceed to call my witnesses.

EVIDENCE FOR THE DEFENDANTS.

Mr. *George Wakefield* sworn.—Examined by Mr. Serjeant *Cockell.*

You are a merchant in Manchester I understand?—I have been.

Do you remember the time of the riots when Mr. Walker's house was attacked?—I do.

After that night do you know whether the constitutional society which had been formed in Manchester, met at Mr. Walker's?—Yes.

Were you a member of that society?—I was.

What was the object of that society?—A parliamentary reform.

How happened it that after that time the meetings were held at Mr. Walker's?—I do not know particularly; some of the public houses had refused to let us have a room any longer.

However in point of fact the meetings then were held at Mr. Walker's?—They were.

We have heard of the time of the riots, you will speak to the day as nearly as you remember?—I believe it was on Tuesday the 11th of December.

How often did the society meet?—Once a week or once a fortnight, I declare I do not recollect which.

Did you ever attend those meetings?—Pretty regularly.

How long did you continue to attend them?—Till nearly the last meeting, I believe, which was some time in the spring of last year.

Was there a free admission to any person who might choose to come?—Not that I know of.

To members of the society?—There was.

* See his case, Vol. 3, p. 1381, of this Collection.

† See his case Vol. 9, p. 577, of this Collection.

We have heard that men exercised with arms in the warehouse were drilled in the use of arms; is that true?—Not that I know of.

Did you ever see such a thing?—No.

In what part of Mr. Walker's house were the meetings held?—In the upper room in the warehouse.

What passed at those meetings?—The different businesses respecting the society.

Was the king damned?

Mr. *Law.*—You must not put that.

Mr. Serjeant *Cockell.*—Tell us what was said about the king.—I do not recollect hearing any thing said about the king.

Did you ever hear any thing said about overthrowing the constitution by means of arms or otherwise?—I never heard any such thing.

Was any thing said about inviting the French to invade the kingdom?—No.

Did you ever hear any thing of the sort?—No, not a syllable.

If men had been drilled in the use of fire-arms, must you not have seen it?—I must.

Did you ever see any?—No.

Ever hear of any?—No.

If any persons had been drilled in arms for the purpose of offence, or destroying the government, would you have continued a member of that society?—No, not a moment.

Did you ever hear any thing said about inviting an invasion from France?

Mr. *Law.*—Ask what did pass there when this man was present.

Mr. Serjeant *Cockell.*—I have no wish to lead.

Mr. *Erskine.*—I should be sorry to offer any testimony that is not in the ordinary course, but when a witness comes to contradict to a particular point, how can we act any other way?

Mr. Justice *Heath.*—He has said, no mention was made of any invasion.

Mr. Serjeant *Cockell*—What was the sole object of your meeting?—As far as I understood it, a parliamentary reform.

Was there any act done at your meeting to your knowledge that was directed otherwise than to that end?—No.

Did you at any time, or any person in your hearing, in that room, say or do any thing to overturn the government of the country?—No, never.

What was the reform that you sought, and by what means?—That is a point upon which few people are agreed; but it was a parliamentary reform.

By means of menacing government?—No.

Inviting a foreign enemy?—No.

Was it in any other way than such means as you suppose the law to allow?—No, by no other means, than what we apprehend to be constitutional, nothing but what the law allows.

Mr. *Erskine.*—The witness has said it was to be done by no other means than what in his apprehensions the law allowed; we can go no farther if we were to stay here a month.

Mr. Serjeant *Cockell.*—You attended pretty constantly you have said. What have you heard Mr. Walker say at any time?

Mr. Justice *Heath.*—You may ask him, did he hear Mr. Walker say any thing about the king.

Mr. Serjeant *Cockell.*—What number of men might there be generally?—Sometimes more, and sometimes less; I have seen twenty in the society, and I have seen more, the numbers differing at different times.

Did you ever see any men exercised in the use of arms?—No.

Did you ever hear any thing of the sort mentioned?—No, if I had, merely to learn the use of arms, I should have been one myself probably, but I never heard any thing of it.

Did you ever hear Paul or any other person say that he knew there would be a revolt from Ireland?—I do not recollect any such thing.

Did you ever hear any one say if we had a revolt it would be through the Irish?—No.

Did you ever hear any one say they had sent a deputy to Ireland as a king, and damn him and all kings?—No.

Could any such expressions have been made use of without your hearing of them?—No, I am sure there could not.

Did you ever hear Mr. Walker damn the king?—No.

At any time?—No.

Did you ever hear it said either by Mr. Walker or any other person, that Mr. Yorke was going through the three kingdoms to know the aid that there might be for the French?—No.

Mr. *Law.*—Were you there when Mr. Yorke was by?

Mr. Serjeant *Cockell.*—Dunn said, there were every night conversations about the king.

Mr. *Walker.*—Did you ever hear me say any thing unbecoming an honest man and a good citizen?

Mr. *Law.*—We cannot ask that.

Mr. Serjeant *Cockell.*—Do you remember the time when Mr. Yorke was in the chair?—I do not recollect that I was there at that time.

Did you use to skulk in privately and secretly?—No.

Did you go in always the same way?—I cannot say whether I did at all times, I went in at different doors; I was not going about any thing I was ashamed of.

Mr. *George Wakefield,* cross-examined by Mr. *Law.*

You are or were a partner with Mr. Grant?—Yes.

He is a brother in law of Mr. Walker?—Yes.

Have you attended at most of those meetings?—At many of them.

Did you see Dunn there at any of them?—I do not remember that I ever did.

Not at any?—I believe he was not a member of the same society.

Are you of the Reformation Society?—No; of the Constitutional Society.

Did that society meet at the house of Mr. Walker?—Yes.

They met on different nights, did they?—I believe so; I was not a member of any other society.

Whether you saw Mr. Yorke at that meeting that you attended?—I do not recollect seing him there at all.

Do you know him?—I do not know him.

How came you to have no doubt you had seen him more than once?—I do not recollect I said any such thing.

I took you down that Yorke was by?—I did not say so.

You do not know whether Yorke was present at any meeting? I believe he was present at a meeting, but I do not recollect being there when he was.

Mr. Justice *Heath.*—It was a different society.

Mr. *Erskine.*—They met in the same room at the same time.

Mr. *Law.*—Do you mean to say the Reformation Society and the Constitutional Society met at the same place and time under the roof of Mr. Walker?—Yes, occasionally; I have seen the Reformation Society there at the same time, and in the same room.

As you resorted there frequently, and the societies frequently met there, if this man Dunn had gone to Mr. Walker's, you might probably have seen him?—Probably I might.

Is his person familiar with you?—I saw him this morning.

You do not recollect him?—I do not.

What time of the year, did you attend at these meetings?—Almost all the year.

From September up to June?—I do not recollect particularly.

Do you recollect the time when Yorke was at Manchester?—No.

Whether you have not declared you were present when Mr. Yorke was at one of these meetings?—No.

Have you not said so in this court?—If you have taken it down so, you have taken it down wrong; I do not know him.

Mr. Thomas Walker you have seen of course there?—Yes.

Mr. Cheetham?—Yes.

Mr. Jackson?—Yes.

Pearsall?—I do not know him; I may know his person.

M'Callum and Smith?—I have seen them there.

Do you know where they are now?—No.

Booth you have seen there?—Yes.

And Paul?—Yes.

And Collier?—Yes.

Have you seen them very often?—Several times, some of them very often.

But you do not recollect whether you ever saw Dunn there?—No.

You know Mr. Kinnaston?—Yes.

I believe you will not refuse him the testimony that every man will give in his favour, that he is a man of credit and character?—I do not know him, but personally.

However you take upon you to swear there were never any men drilled while you were by?—Never.

How many hours were you there at a time?—About two hours.

You say twenty men might be there—cannot you extend their number to fifty or sixty?—I may perhaps have seen fifty or sixty.

What is the different object of the societies? the Constitutional Society is for a reform in parliament; what was the Reformation Society for?—I was not a member of the Reformation Society.

It is commonly called the Subversion or Overthrow Society, is it not?—I do not know what you may call it.

Being at these meetings so held jointly, the Reformation and Constitutional Societies, you never knew the objects for which the Reformation Society was formed?—I did not attend to the objects of the Reformation Society at all.

Then you do not know the object for which it was formed?—How should I when I was not a member of it? they met there to join the Constitutional Society when any member of that society took the chair. I had nothing to do with it, and did not attend to it.

And you were even a stranger to the objects of it?—Yes.

You are a partner with Mr. Walker's brother-in-law, and being present at their assemblies, you did not know what they assembled for?—I assembled there to meet the Constitutional Society, and their objects were the same I should suppose.

Mr. *George Wakefield*, re-examined by Mr. Serjeant *Cockell.*

Although you were not a member of the Reformation Society, but of the Constitutional Society, did you ever when the Reformation Society was there, hear or see any person exercising themselves in arms?—Never.

George Clark sworn. — Examined by Mr. *Chambre.*

You are a member of the society called the Reformation Society at Manchester?—Yes.

When did you become a member of that society?—About Easter 1792.

When was the society instituted?—Either in Easter week, or about a week before, and I was a member about the second or third meeting.

How often did you meet?—I was a very constant attendant.

At what periods did you meet?—We had weekly meetings.

Did you continue a pretty constant attending member during the whole time of the existence of that society?—I did.

as near as you can recollect?—It was the general rule to meet at seven, and the business of the meeting to begin at half past; I was scarcely ever out of the meetings at the time the business began.

And did you stay till the conclusion, or near the conclusion?—I never, to my knowledge, went away before the conclusion of the meeting.

What were the avowed purposes of this meeting?—To obtain a reform in parliament.

Now during all this period of your attendance there, did you ever hear Mr. Walker or any of the defendants in this indictment, propose any other than peaceable means of reform?—No, I never did.

Did you ever hear them make use of any expressions that had in your judgment any tendency to excite any body to acts of rebellion?—No, I did not.

Was any mention made of an expected invasion of the French, and of any attempts to assist them in that invasion?—No, there was not.

Did you ever hear any thing like it proposed at any time?—No, I never did.

Had that been the subject of your deliberations, or had such expressions been used by Mr. Walker, or any of the persons there—do you think you must not have heard them, and must not have remembered them?—I am certain any thing of that sort could not have happened without my observation, I attended so strictly.

Upon the 11th of December the riot happened, I believe?—It did.

Were you in Mr. Walker's house at that time?—I was.

What happened on the night of the 11th?—About half past six o'clock I went from my house into the town; when I got into the market place, I saw several people throwing stones at the windows and doors of Messrs. Falkner and Birch's * shop in the Market-place; I went as soon as I saw what was going on there, to Mr. Walker's, and I was there till the rioters approached his house; when they first approached it, I was up stairs in the warehouse; I very well recollect there came somebody up and told Mr. Walker the rioters were before his house, and I well recollect he went down, but he was not long before he came up again, and said, they had only broke a few panes of the windows and were gone off again.

Did any mischief happen that night, the 11th?—They attacked the house four different times; I was up in the warehouse while it was attacked three times, before I went down; but the fourth time I was in the house when it was attacked; it was attacked with very great violence.

On that night were there any arms in the house that were used for resisting this mob?—I saw no arms in the house, only a couple of blunderbusses, and I think I recollect something of a pistol, that was all I saw.

Do you know whether any attempt was made on that night to obtain assistance from the civil power, from the magistrates; were you present at any requisition of that sort?—I was not.

After the riot, to the 25th of March, did you attend the meetings at Mr. Walker's?—Yes.

Did you see at any time any arms used at Mr. Walker's house for any other purpose than to protect the house?—No, I never did.

When did you see any arms there used for that purpose?—I never saw any arms but upon the 11th of December.

Were there at any time, to your knowledge, any men exercised or instructed in the use of arms?—No, there never were.

Could such a thing possibly have existed at any of the meetings, without your knowledge?—No, it was impossible it should exist without my knowledge.

Do you know what the arms were that Mr. Walker had in his house?—I never saw any fire arms, except these blunderbusses, and some swivels.

I believe you do not know in what way Mr. Walker became possessed of these swivels?—No.

But whatever the arms were, were they ever brought out or used for the purpose of exercise, or any other purpose, to your knowledge, except on the 11th of December?—They were not.

This you are perfectly certain of, that there never was any training or exercising of men there?—There never was.

Did you ever hear Mr. Walker, or any body else belonging to the society, declare a purpose of that sort?—No.

Do you remember Dunn being at any of these meetings?—I have seen Dunn there.

When he was attending there, when you saw him, can you take upon you to say, that if any declarations of any purpose of that sort had been made, or if there had been any exercise of arms, you must have seen it and known it?—Yes.

If you had heard amongst the members of this society any proposition or intention to assist the French in an invasion, would you have continued a member of that society?—No, I certainly would not.

Were you present at the time when a person who has been named, a Mr. Yorke, was at the meeting?—Yes, I was.

Do you know whether he attended one or more meetings?—I never saw him there but once.

Did he take the chair?—There was no person in the chair that night to my knowledge.

Did Mr. Yorke talk any thing of visiting

* Messrs. Falkner and Birch were stationers in Manchester, and the sole proprietors and publishers of the Manchester Herald. *Orig. Ed.*

the three kingdoms, to see whether there were persons that would assist the French in case of an invasion?—No, he did not.

Did he speak any thing of an invasion of the French with fifty thousand, or any other number of men?—He did not.

Did he express any purpose or wish in any way whatever to assist them in any of the three kingdoms?—He did not.

If he had made any public declaration of that sort, are you certain you must have heard him?—Yes.

George Clark cross-examined by Mr. *Wood.*

You continued to meet pretty constantly from December till the 25th of March, did you?—Yes.

You met every night, once a week?—I missed two nights.

Had you a chairman at every time of your meeting?—We did not vote a chairman every night.

How happened that?—Sometimes we had no business to do.

How came you to meet so often as once a week?—We met to discourse on our own business, to discourse on political matters.

You discoursed on political matters from half past seven till nine, and then went away?—Yes, we generally broke up about that time.

You never read any thing, I suppose?—I never heard but very few things read.

There were some few things read, were there?—Yes, I have heard a letter or two read, and I heard an excellent piece that came from Sheffield, signed "A Reformer," read.*

You never heard any thing else read?—Not to my knowledge.

You mean to swear you never heard any thing else read?—No, nothing but that and letters.

You had a good many letters?—No, very few.

Who produced those letters? Did you all produce letters?—We had no letter, unless it came from Sheffield, or some other society.

How many societies did you correspond with?—That I cannot tell.

Did you ever come to any resolutions in writing at your meetings?—We had general rules, that were read every night of our meeting.

Did you come to any resolutions at your meetings?—Yes.

Mr. *Erskine.*—You shall have them all read.

Mr. *Law.*—How can you make them evidence?

Mr. *Wood.*—Who kept your resolutions?—The secretary.

Who was he?—John Cheetham was secretary one part of the time.

Who was secretary the other part of the time?—John Stacey and George M'Callum.

Where is George M'Callum?—I cannot tell.

Is not he gone to America?—I do not know.

George Clark re-examined by Mr. *Chambre.*

Did you ever at any time see Mr. Walker, or any other defendant, do any one act that was inconsistent with the duty of a peaceable citizen?—No.

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* Copy of the paper here referred to.

To the Reforming Societies in Sheffield, and other persons who concur with them in sentiment.

Allow a sincere well-wisher to the liberties of mankind, and particularly to the happiness and freedom of this country, most earnestly to exhort you, his fellow townsmen, to continue to testify, by the whole of your behaviour, that "the true spirit of liberty is a spirit of order," as your Society for Constitutional Information has well expressed it. Be this your invariable method of refuting and defeating the numerous calumnies of those, who, from mistaking your views, or other motives, misrepresent your real designs. You may be assured, that nothing will chagrin such as are indeed your enemies, so much as to find, that you keep steadily, on all occasions, to a strict observance of the laws, and a peaceable conduct; nor would any thing gratify them more, or be so essentially injurious to the cause of that reform which you wish to obtain, than for you to be so far misled, as to commit any act of riot or tumult.

Promote with firmness, by all just, legal, and peaceable means, a reform in the representation of the people, maintain the freedom of the press—that indispensable safeguard to your liberties—and assert, in the like calm and peaceable way, your right to free discussion on political subjects. But, at the same time, do all this with propriety and discretion. Do nothing which can be conceived by others (except from wilful perversion) to be inimical to that constitution, one branch of which you profess it to be your design to restore to its due purity by constitutional renovation. When events happen favourable, as you think, to just and universal liberty, avoid public rejoicings and processions, because they may prove offensive instead of conciliating to those of your fellow-citizens who do not view such occurrences in the same light that you do; because they may afford your opponents, and those who wish you ill, an opportunity to excite confusion and disorder; whereby the persons or property of your neighbours might be injured, which would be laid to your charge, though you might be quite clear of any intentional harm, and because they may, from circumstances attending such processions and rejoicings, be construed into an insult to the government of your own country, notwithstanding you may mean nothing of the kind.

Leave all tumult and disturbance, all injury

Mr. *Law.*—Does your lordship think it is proper to put such a question?

Mr. *Erskine.*—Mr. Walker is indicted before your lordship and his country, for having confederated and conspired, with the other defendants, and others unknown, to overthrow by force the constitution of this kingdom. The evidence is, that this confederacy and conspiracy existed and was brought into overt act, at meetings, at every one of which this worthy man was present. I say I have a right, in defence of my clients, and till his lordship rules the contrary, I will insist upon that right, that this witness shall say, whether, at any of these times, he ever heard Mr. Walker utter any word, or speak inconsistent with the duty of a good subject?

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to those who differ from you, either in politics or religion, to men of a very different description from yourselves—to men who level the property and endanger the persons of innocent and meritorious citizens, for exercising the right of private judgment, to those who oppose all reform, to those who are zealots for acknowledged abuses. To such men as these, let it be left to prove themselves the only *levellers* to be found in this country.—How contrasted is the spirit of such men, to that liberal one of moderation and social intercourse, which happily prevails among persons of all opinions in this town and neighbourhood.

As no instance of outrage and violence can be justly alleged against the friends of reform during the late and still existing alarms, do you carefully support that honourable and peaceful character. Manifest to all that you do not entertain the levelling principles you are charged with, by a constant regard to the safety of the persons and property of all around you.—Protect, but do not destroy.—Bear reproach with manly firmness, but do no injury yourselves. Convince by peaceable behaviour, by obedience to legal authority, and by that dignity of conduct which is becoming those who are influenced by the principles of genuine liberty.

Your townsmen and neighbours, at their meeting this day, have done nothing unfriendly to liberty or reform, but have expressed a confidence in the peaceable disposition of the inhabitants of the town. It is your part to continue to show that you are worthy of that confidence. They have declared their firm attachment to the government and constitution of their country, one grand principle of which is, to amend what may be amiss, from the lapse of time or other circumstances, and their abhorrence of all riot and tumult, with a resolution to assist the civil magistrate in quelling every thing of that nature. These declarations are agreeable to the sentiments contained in some of the publications of your Society for Constitutional Information. In confirmation of which, one of the members of that society gave his approbation to the proceedings of the meeting in a manner highly to his credit; and the general concurrence, as well as the handsome behaviour of the others who attended, ought not to pass unnoticed.

Permit me to add a few words more.—What is the object of political reform, but by suitable regulations to guard more effectually against oppression, to produce more general comfort and happiness, to prevent future unnecessary burdens on the subject, and gradually, as well as rationally, and with due respect to safety as well as justice, to diminish those which already exist.—To the industrious, economical, regular, and orderly mechanic, such a reform would become an essential benefit, as he could then, by moderate but constant labour, enjoy more comfort, maintain his family better, and be able to provide a sufficiency for sickness and old age; but to the idly-disposed, the profligate and drunken workman, on the supposition of his continuing to be so, it could be of no advantage.

May I then farther urge upon you the necessity of letting personal amendment go hand-in-hand with political reform and information. When you examine the errors of government, do not forget to cast an eye upon your own failings. These you may correct by sincere efforts, for this is within your own power. Your endeavours to reform the other, though also laudable, may not be certain of success. However, you will be much more likely to succeed in public reformation, when you have abandoned whatever is degrading to your own characters. From your general behaviour, let no one be able to point out a reformer, or a member of one of your societies, without, at the same time, he shall point to an industrious, regular man, of sober manners, and an orderly, peaceable disposition. By being meritorious servants, good masters, kind husbands, and provident fathers, you will acquire a respectability which will conquer the prejudices of those who now traduce your intentions. These are means by which you may indeed put yourselves on an *equality* with men in higher stations, and but too frequently become their superiors, in real worth and usefulness, in actual comfort and enjoyment, and by the possession of true independence. This should be your ambition, and in this may you succeed, both in self-reformation, and, united with your fellow-citizens, in that of the representation of the people, to the extent that will most conduce to individual, as well as to public happiness and prosperity, is the cordial wish of

December 31, 1792. (Signed) A REFORMER.

The sentiments contained in the above paper, were so much approved by the Manchester Constitutional, Reformation, and Patriotic Societies, that they unanimously directed two thousand copies to be printed and distributed. —*Orig. Ed.*

Mr. *Law*.—Then I object to that.

Mr. *Erskine*.—Good God! where am I? Am I in a British court of justice? How is a man to defend himself under such a charge? How are my clients to be exculpated?

Mr. *Law*.—By legal evidence.

Mr. Justice *Heath*.—I think that question is admissible enough.

Mr. *Chambre*.—Did you, at any one of those meetings, see Mr. Walker, Mr. Jackson, Mr. Paul, or any of those persons that are now indicted, do any one act inconsistent with the character of a peaceable subject?—No; I have often heard Mr. Walker——

Mr. Justice *Heath*.—That is irregular.

Mr. *Erskine*.—Your lordship knows the constitution of the country gives me no opportunity of addressing myself to any other court for any revision, and therefore I have a better title to be heard; I will prove that Mr. Walker made use of expressions there of a direct contrary tendency.

Mr. Justice *Heath*.—You should have examined to that in chief; you are coming to particulars now upon a re-examination.

Mr. *Erskine*.—It arises upon Mr. Wood's cross-examination. I am glad to hear that we have your lordship's authority to examine in chief to it; we have a great many more witnesses to examine.

Mr. Justice *Heath*.—If you have a mind, ask that general question.

Mr. *Law*.—It is a complex question, embracing the witness's idea of what may become an honest man, pointing at no particular fact or expression, which any man may answer according to his vague ideas of propriety.

Mr. *Erskine*.—When a man is indicted for exciting sedition and rebellion, is it not evidence to show that he held a language directly repugnant to any such idea? If he had said God bless the king, would not that be evidence?

Mr. Justice *Heath*.—If it was at that meeting.

Mr. *Law*.—If it goes to the whole tenor of his conduct; but a man shall not be justified by saying, God bless the king, in the street when he has been damning him in his house.

Mr. Justice *Heath*.—Ask him to their general declarations.

Mr. *Chambre*.—At those meetings, when Mr. Walker was present, did you hear him say or do any thing that had a tendency to disturb the peace of the kingdom; I am examining to the meetings of the Reformation Society between the 11th of December and the 25th of March?—When Mr. Walker came to our meetings he generally addressed us to attend to peace and good order.

Did you, or did you not hear Mr. Walker say any thing inconsistent with peace and good order, or any thing against the king and his government, or any thing that tended to subvert it—or say any thing to excite people to take up arms against the king, or to destroy the constitution?—I never did in my life.

Mr. *Erskine*.—Whether the witness has not a right to go on and say, but on the contrary he said so and so, am I not at liberty to ask that?

Mr. Justice *Heath*.—Not in this stage.

One of the Jury.—What is the height of the warehouse in which you used to meet?—I never took notice how high it was, how many pair of stairs up.

The height of the room from the floor to the ceiling?

Mr. *Erskine*.—We will give evidence of that.

James Lomax sworn.—Examined by Mr. *Lloyd*.

Where do you live?—In Salford.

Are you a member of any of these societies?—Yes, the Reformation Society.

When did you become a member of that society?—The first night I met, was the Monday night after Mr. Walker was so ill used at the riots in Manchester—the 17th of December I think, and I entered about three nights after, we met every Monday night.

Did you often attend the societies?—Yes, I think I did not miss above once, till the latter end of March, or the beginning of April, for there were some resolutions signed, that were put into the last paper Mr. Falkner printed; I believe I did not miss but one night; that was somewhere towards February, but I am not certain which night it was.

At what time did you generally go to the meeting?—About seven o'clock; the last Monday in the month was my box night, I either then went at eight, or at seven and left the place at eight.

How long did you stay?—I generally staid till the end, till they were all going, and I saw nothing else likely to be done.

What was the avowed object of this society?—To gain a reform in parliament.

Do you know Dunn by sight?—Yes.

Did you ever see him there?—Yes, and one night he and I were a good deal together; I recollected him when I saw him to-day: I have never seen him since.

You have seen Mr. Walker there?—Yes.

Have you ever heard Mr. Walker damn the king?—No.

Did you ever see any persons exercise with arms there?—No.

Did you ever see any firelocks there?—No; only the first night I went, I stopped by the desire of Mr. Walker that night, for he expected another riot; they broke one of his windows, we went out, and whether Mr. Walker had a pistol in his hand when we went out to find the person, or not, I cannot tell; I saw nothing except in his warehouse there were six pieces of some sort, but not firelocks.

What do you call them? what length are they?—About this length [describing them to be about eighteen inches long].

You never saw any person exercising there with firelocks?—Never.

‡

Did you ever hear any recommendation of beginning to exercise?—No.

If there had been such in the society, you must have seen it?—Yes, and I would have scorned to have tarried in it.

Did you ever hear Mr. Walker, or any other, say they would overthrow the constitution?—I never did.

Would you have stayed in the society if such a proposal had been made?—I do not believe I should one moment.

Did you ever hear Mr. Walker or the others who were there say or do any thing inconsistent with the duty of good subjects?—No; I have heard Mr. Walker many times advise us to be peaceable, and say many times he had no doubt we should be peaceable: I never saw any thing in that society that they need to be ashamed of either before God or man.

Did you ever hear them talk of exciting the people to sedition or rebellion?—No.

Or exciting the people to take up arms?—No.

Did you ever hear them talk of assisting the French?—I never did.

If you had heard them talk of assisting the French, would you have stayed with them?—No; my principles are those that I would neither have war offensive nor defensive.

Do you know Mr. Collier?—I believe I do; he is a tall man.

Do you know what religion he is of?—A Quaker.

Have you heard him swear often?—No, I never did in my life.

James Lomax cross-examined by Mr. *Topping*.

Where do you live?—In Salford.

What business are you?—A weaver.

You had attended these meetings then before you became a member?—Yes, I think it was the third night, but I cannot be positive.

Then people were admitted to attend these meetings who were not actually members?—I never saw any denied; I have taken a man twice myself.

They were admitted to these meetings, although they were not members?—Yes.

Before you became a member you were admitted, and after you became a member you took people with you?—I took one man with me that had a desire to go.

Upon the 17th of December you became a member?—No.

You said you went on the 17th, and went before you became a member?—No, I never attended till the 17th of December.

When did you become a member?—I believe it was the third night after.

Did Mr. Walker ask you to become a member?—No, I went of my own free will; I do not know that any man asked me.

Do you remember Paine's works being read there?—No, I never saw them there.

Did you hear them read?—I never did hear them read there.

Did you ever hear any part of Paine's book read there?—No.

Have not you, upon your oath, heard books read there, which you understood to be Paine's books?—I never did.

That you swear?—I do; I have heard books read, I did not know whose they were; if they had been Paine's they would have mentioned that, I suppose.

You mean to say no books of Paine's were read there?—If it had been Paine's Rights of Man, I should have known that.

Was it your knowledge of the contents of that book that entitled you to be a member of this society;—No.

Had you the knowledge of Paine's book before you became a member of this society, or after?—Before, I believe.

Upon your oath, have you never heard Jackson, one of the defendants, read Paine's Rights of Man there?—No, I never have that I know of.

You say you know Paine's Rights of Man perfectly well?—Yes.

Will you venture to swear that you never heard Jackson read any part of that book there?—I never have as I know of.

Do not you know?—He has read books.

Has he read books repeatedly at these meetings?—I only heard one or two read, and those were abstracts.

Were they not abstracts out of Paine's Rights of Man?—They were not.

What was the subject he was reading about to you?—There was one book, I remember, that came from London, concerning the unequal representation of the people, that came from the Friends of the People.

Mr. *Topping*.—That came from the Friends of the People!

Mr. *Erskine*.—I presume it did, as I believe a packet was transmitted from the Friends of the People to the Constitutional Society in Manchester. I am a member of the Friends of the People, and if you have any questions to ask relative to that society, swear me, and I will answer them.

Mr. *Topping*.—Who read that?—Mr. Jackson.

Was he the general reader at the meeting? who read besides him?—I have heard Mr. Walker read newspapers.

Sometimes Mr. Walker read, and sometimes Mr. Jackson?—We had nothing else to pass our time away with; and to see how public affairs were going on.

James Lomax, re-examined by Mr. *Lloyd*.

What night was it you saw Mr. Walker go out, and you suppose with a pistol?—It was on the 17th of December.

Were the riots then continued?—They broke one of Mr. Walker's windows that night.

You were not a member then?—No.

You went as a friend to defend Mr. Walker's house?—I did.

The book you heard read was, you say, the publication by the society of the Friends of the People in London?—It was.

James Roberts sworn.—Examined by Mr. *Vaughan.*

Are you a member of the Reformation Society at Manchester?—Yes.

How long have you been a member of that society?—I entered, I believe, on the 31st of December 1792.

Have you regularly attended the meetings of that society?—I attended very regularly,

From this time in December till what time?—Till the 10th day of June 1793.

What was the avowed object of the meetings of this society?—To obtain, by constitutional means, a fair and adequate representation of the people.

Do you know Mr. Thomas Walker?—Yes.

Have you seen him at your Reformation society?—Very frequently.

Up to what time did you see Mr. Walker there?—Till the 29th day of April.

Have you seen Thomas Dunn there?—Yes I have.

Have you been present when Dunn was present?—Yes.

Did you at any of these times, when Thomas Dunn was present, see any exercising of men with arms?—No, never.

Or at any other time, when Dunn was not there, did you see any exercising of men with arms?—Never.

Did you at any time hear any language whatever from Mr. Thomas Walker, or any other persons, inciting the society to exercise with arms, for any purpose, and what?—No, I never saw them exercise with arms.

In what place did this Reformation Society meet?—In Mr. Thomas Walker's warehouse.

Up stairs, or below stairs?—Above stairs.

Do you know the height of this warehouse, from the floor to the ceiling?—I do not.

Did you ever hear from Mr. Thomas Walker, or any other persons whatever, any language relative to cutting off the head of the king, or any thing of a similar tendency?—Never in my life.

Did you ever hear or see from Mr. Thomas Walker, any language or conduct whatever, that tended to incite the people against the government, or to any similar purpose?—I never did.

Did you ever see in Mr. Thomas Walker, or any other persons whatever attending that society, any conduct unbecoming honest men and good subjects?—Never.

Did you ever see any arms at any time in the warehouse?—Just after the riot I saw some pieces of cannon; there were five or six.

What sort of cannon were they, twenty-four or forty-eight pounders?—I do not properly understand them.

What length were they?—About three quarters of a yard long.

Did you ever see any musketry there?—No, never but on the twelfth of December.

You never saw any musketry at any time during your attendance, but on the night of the riot, or the night after?—No, that was one musket in Mr. Walker's kitchen.

How often did you see that?—Never but once.

James Roberts cross-examined by Mr. *Johnson.*

What are you?—I am in a warehouse.

What trade are you?—I am in a warehouse.

What are you?—A warehouseman.

Whom do you live with?—Messrs. Nichols and Roberts.

Who introduced you into this society?—I was not introduced by any person.

How came you to go there?—I went there the 12th of December, the night following the first riot.

Were there more riots than one?—The mob met two days together.

I asked who introduced you to this society; you said nobody. When did you go to it first?—The 12th of December was the first time I went to Mr. Walker's.

When was the first time you went to the society?—The 20th of December.

Were you a member then?—No, I did not become a member until the 31st of December.

You said, just now, you became a member on the 31st of January 1793?

Mr. Serjeant *Cockell.*—You have taken him down wrong.

Mr. *Johnson.*—What was your inducement to become a member of this Reformation Society?—They wished a fair representation of the people in parliament.

Mr. Justice *Heath.*—Do not let us inquire into that.

Mr. *Erskine.*—It is evidence for the defendants, and if the gentlemen choose to ask it, I have a right to the evidence.

On the 12th of December, as I was at work, I saw a great concourse of people met in the Market-place; I thought there would be a riot in the evening; I went out, went into the Church-yard, and went to Mr. Walker's house that night; and I saw such conduct in Mr. Walker and the people that were there, that it made me determine to enter among them.

Mr. *Johnson.*—You say you saw no exercising, but you did see arms?—I never saw any fire-arms, but one musket.

Did you see no other fire-arms?—Yes, six pieces of cannon.

Were they large enough to carry a pound ball?—I cannot tell, I was never used to them.

Did you see any blunderbusses there?—I do not recollect seeing any blunderbusses there.

Did you ever hear any books read there?—I heard one book read.

What was it?—They called it the Irish Address to the Scotch.

Who read that?—Mr. Walker did.

Perhaps you cannot recollect any particular passage in it?—No.

Mr. *Erskine.*—I dare say you recollect that is no evidence, therefore you ask it.

Mr. *Law.*—It confirms him as to the reading of books there.

Mr. Justice *Heath.*—There is no doubt, your witness was there.

Mr. *Johnson.*—You heard that read by Mr. Walker?—Yes.

Mr. *Vaughan.*—They did not shoulder these swivels, did they?—No, never.

Mary Denham sworn.—Examined by Mr. *Erskine.*

How long have you lived as a servant with Mr. Walker?—For two years upon the 10th of March last.

Do you remember the attack made upon your master's house?—Yes.

Were you in the house at that time?—Yes.

I suppose you were pretty much frightened?—Yes, I was.

Do you remember any cannon?—Yes.

When were these cannon brought to town?—The day after the riot.

Where were they before?—In the country.

At Barlow-Hall, where Mr. Walker lives?—Yes.

They are little things upon carriages?—Yes.

They were brought into town the day after the riot?—Yes.

Before the time that these cannon came, do you remember seeing fire-arms in your master's house?—No.

Were you admitted to all the parts of the warehouse, and the house—you went where you pleased, I suppose?—Yes.

Did you ever see any men exercising with arms there?—No.

Did you ever hear of any thing like it?—No.

Did you ever see any arms there before the time of the riots?—No.

If any such exercise of people with arms had taken place, must you not have known it?—Yes.

Why should you have known it?—They could not do it in the warehouse, or house, without my seeing or hearing it.

Did you ever either see any such thing done, or hear of its being done?—No, never.

Can you take upon you to swear that it was not done?—Yes.

After the riots, we understand these cannon, and some muskets, and other arms were brought for the purpose of defending the house?—Yes.

What was done with them after the 19th of December?—They went into the country again I believe.

What was it that went into the country again?—The cannon.

What became of the blunderbusses, pistols, and muskets?—I never saw any.

You never saw any after the riot, nor before?—No.

You do not know where these cannon went to?—No, I saw no more of them.

Mary Denham cross-examined by Mr. *James.*

Were you a member of any of these Reformation Societies?—No.

Did you ever attend them?—No.

How could you tell what was going forward at any of those meetings? you did not generally attend the warehouse?—No.

Your business was in the house?—Yes.

But how can you pretend to say what was done in the warehouse; they might have been in the warehouse for what you know?—Not to exercise they could not; I must have seen them through the windows.

Have you been accustomed to see men exercise?—I have seen the soldiers exercise.

They did not always fire when they exercised?—No.

Have you not seen them exercise, when they made very little noise?—No, I do not know that I have.

Have you never seen them present, and rise, and kneel, and so on; you say there were no blunderbusses or muskets?—I never saw any.

And if there were, you must have seen them, must you?—Yes.

Mr. *Erskine.* Is there not a double light through the warehouse?—Yes.

If they had been exercising with fire-arms there, must you not have seen and heard them?—Yes.

Martha Wilkinson sworn.—Examined by Mr. Serjeant *Cockell.*

I understand you live in the service of Mr. Walker; you attend the Miss Walkers, as their maid?—Yes.

How long have you lived in Mr. Walker's service?—More than three years and a half.

Where were you at the time of the riot, the first night Mr. Walker's house was attacked?—At Barlow.

Mr. Walker's country residence?—Yes.

When did you return from Barlow?—The day after.

How long did you continue after you had returned from Barlow?—Till the beginning of May.

During that period you lived in his house at Manchester?—I did.

Do you remember after your return from Barlow, whether any arms of any sort were sent for?—No.

Do you remember the cannon?—Yes.

Where did they come from?—From Barlow, before I came.

How long before?—The same day I came.

That was the day after the riot?—Yes.

You know Mr. Walker's warehouse?—Yes.

Can you, from any room in the house, see into the warehouse?—Yes.

Is the warehouse so near to that part of the house, from whence you can see into the warehouse, that if any noise, for instance the

clattering of ramrods, or any thing of that sort had happened, you could have heard them?—Yes.

You have seen soldiers exercise at Manchester?—I cannot say I ever did.

But if there had been any noise of that sort, you were near enough to have heard, and to have seen?—Yes.

Did you ever hear or see at any time in your life, any men exercising in arms at Mr. Walker's?—No, never.

If such a thing had happened when these weekly meetings were held, must you not at some time or other have heard it?—Most certainly I must.

And you are prepared, safely and conscientiously to swear, that no such thing happened?—I am.

Describe the situation of this window?—There is but a narrow yard that parts the warehouse and the house, and the windows of the warehouse, and the windows of the room in which I was, were opposite.

Then if any thing of that sort had happened, you must have seen and heard it?—I certainly should.

Do you know the height of the warehouse?—I do not.

You know the gentlemen who came to Mr. Walker's? you know that clubs were held there?—Yes.

I confine myself to the time during the holding of the clubs; did you ever hear any noise then of arms?—Never.

Did you ever see any exercising of men at those times, or at any other?—Never.

Martha Wilkinson cross-examined by Mr. *Law*.

In what room do you usually live?—In the nursery; the nursery in general.

Is the nursery higher or lower than the warehouse?—From the nursery windows we can see into several rooms of the warehouse.

Is it higher or lower?—It is higher than one part of the warehouse, and lower than another.

Is it as high as the upper room of the warehouse?—It is not quite so high.

Will you say, that you can conveniently, from that room, see into the upper room of the warehouse?—We can see into it.

Can you see from one end to the other of the warehouse, from the nursery?—Yes, from one end to the other of the upper warehouse.

The upper warehouse of all?—Yes.

And were you every night, for forty nights together, when these persons were there, so watching their proceedings, that you could know if a person had put a musket to his shoulder?—I was not constantly watching, but I have no doubt if there had been such a thing I should have known it.

Did you observe all that passed there?—We frequently watched them.

What did they do when you watched them?—We never saw but they were sitting still.

Talking?—Yes.

You saw books, I take it for granted?—No, I did not.

You never saw any thing read?—Never.

But if there had been Paine's book, or any other book read, you must have seen it?—I did not see any book.

If they had been so employed, you must have seen that too?—I cannot say.

Why could not you see a book held up, just as well as see a musket held up?—I never did see a book read.

How many might there be in the room at a time?—I cannot say the exact number.

You have seen Dunn there?—No.

Were there twenty, thirty, forty, fifty there?—I cannot tell.

Do you think there were so many as forty or fifty?—I do not know.

Had you never the curiosity to count them when there was a good number?—Never.

But if there had been books, you think you must have seen them, and you never saw any read?—I never saw any book read.

Martha Wilkinson re-examined by Mr. Serjeant *Cockell*.

From this nursery, in which you frequently were in the evenings, if there had been men exercising, you must have seen them?—Yes.

What sort of windows are the warehouse windows?—Nearly the length of the warehouse.

Francis Roberts sworn.—Examined by Mr. *Chambre*.

You are a servant to Mr. Walker?—Yes.

How long have you lived with him?—I came to live with Mr. Walker in the year 1791; I have lived with him ever since.

You were a servant to him, of course, when the riots happened in Manchester?—I was.

Mr. Walker has a house at Manchester, and a country-house at Barlow?—He has.

At the time of the riots were you at Manchester, or Barlow?—At Barlow.

When did you come from Barlow?—The morning following.

Do you know what fire-arms Mr. Walker had for the protection of both his houses?—There was nothing for the protection of his house except two pistols, and two blunderbusses, and two fowling-pieces, that I ever saw.

Had he any swivels?—Yes, half a dozen.

Where were the swivels at the time when the riot happened?—At Barlow-Hall.

When were they removed from Barlow to Manchester?—The day after the riots.

You do not know how he became possessed of those swivels?—I do not.

When you came from Barlow, how long did you continue at Manchester?—We came the 19th of December, and returned back the 5th of May.

Immediately after you came on the 12th of December, and for some time after, was there any watch kept at Mr. Walker's house, to prevent any mischief being done to the house—did people sit up all night?—Yes, they did.

Did you sit up for the protection of the house sometimes?—Yes.

How long were they obliged, for the security of the house, to keep up this sort of watch?—For the course of a month, or thereabouts.

Were you often among those who sat up?—I was.

Of course you were in the house at all the meetings of the Reformation Society, that took place between the 12th of December and the 5th of May?—I was.

Had you ever occasion to go into the room where these meetings were held?—I had frequent occasion.

Were these meetings held with open doors, or were the doors locked?—I always found the doors wide open.

There was no sort of secrecy about the purposes of their meeting?—Not to my knowledge.

Have you stayed any time when people were in the room, so as to hear the conversation that passed?—I cannot say I have.

Did you ever at any time hear any expressions made use of, damning the king?—Nothing of the sort.

Did you ever hear any expressions of any sort made use of, to incite any of the people there to break the peace?—I have no knowledge of any thing of the sort.

Was there any exercise of men with guns or other arms?—Nothing of the sort.

Do you think you must have known it, if any such thing had been practised in the place where these people met, or in any part of your master's house?—I am sure such things could not be made use of, but I should have come to the knowledge of it, some how or other.

Did you at any time whatever see or hear any thing done or said there, that had any tendency to disturb the public peace?—I never did.

Francis Roberts cross-examined by Mr. *Wood.*

How many people might there be at those meetings when you saw them?—There might be twenty or thirty, and sometimes more.

How many men do you think there might be, fifty or sixty, perhaps?—I believe not so many.

How many do you think?—There might be thirty-five, or so.

Is that the most you ever saw?—I do not know in particular that it is.

Have you not seen sixty, or more, there?—No.

You will not go higher than thirty-five?—No, I will not.

Did you know those people who had got there?—No.

I believe you were very seldom at those meetings; did you ever stay a meeting through, from beginning to end?—No.

How long might you stay at a time?—Three or four minutes, or so, while I delivered my message.

When you stayed up to protect the house, what had you to protect it with?—We had a sword or two.

How many might stay up with you? did any of the people that attended these meetings stay with you?—They did.

The Reformation Society stayed with you, did they?—Some of those people that met in the warehouse.

How many nights might they stay up with you?—I cannot pretend to say how many.

How many may you have had at a time to stay up with you?—Four or five.

Not always the same people I suppose?—No.

Francis Roberts re-examined by Mr. *Chambre.*

You never particularly, I suppose, counted the number, to know exactly how many there might be?—I never did.

Mr. *Edward Green* sworn.—Examined by Mr. *Lloyd.*

You, I believe, were apprentice to Mr. Walker, and brought up in his warehouse?—Yes.

How long have you been with him?—It will be eight years in July.

Do you remember the night of the riots?—Yes.

Do you remember whether there were any arms got to defend Mr. Walker's house?—Yes, there were some got.

Do you know what arms they were?—They were muskets.

Were there any swivels?—No.

Not that night?—No.

Mr. Justice *Heath.*—How many muskets?—I do not know the number.

Mr. *Lloyd.*—Were you in the house the first night of the riot?—I was.

Do you know when the swivels were bought?—They were a present to Master Walker, by Mr. Jackson; they were bought at Mr. Livesey's sale.

Do you know any occasion upon which those swivels were fired?—I remember they were fired upon the anniversary of the repeal of the fustian tax.

At any other time?—I was not present at any other time.

What is your business at Mr. Walker's, chiefly?—In the foreign counting house.

Is that up stairs, or below, in his warehouse?—Up stairs.

Mr. Justice *Heath.*—Do you live in the house?—I lived in the house five years.

Mr. *Lloyd.*—In what part of the warehouse is the foreign counting-house?—It looks towards Salford, up two pair of stairs.

Do you know the room where the societies met?—It was in a room up another pair of stairs, where the societies met.

Have you ever had occasion to go into that room when they were met?—I had frequent occasions to go up to Mr. Walker upon business.

Did you find the door either locked or fastened?—Never.

Did they seem to be about secret business?—Not at all.

Did you go in without interruption?—Yes.

Have you had occasion to go in more than once in an evening? I may have gone two or three times, not finding Mr. Walker in the first time.

How near is that room to the room where you used to sit writing?—Up another pair of stairs.

Is part of that room, over the room that you were in?—It is.

Did you ever see any men exercising with arms when you went up?—Never.

When you were writing, did you ever hear any arms clashing?—Never.

Were there carpets upon the floor, or any thing of that kind, to prevent the sound?—No.

I understand that you never saw any men exercising with arms?—Never.

Do you know what is the height of that room?—I do not know.

Do you know whether it is such a room that a man could shoulder a firelock?—I do not know; I never took particular notice.

Did you send word before you went in, or go in without giving notice?—Without giving notice.

When you went in, did you hear any conversation—did you ever hear Mr. Walker damn the king?—No.

Or talk of overturning the constitution?—Never.

Did you hear any conversation of aiding and assisting the French?—No.

You never heard any thing of the kind?—No.

When you went in, did they seem instantly to cease their conversation, or to go on with it?—They went on with the business they were about.

Whenever you went in, did you hear Mr. Walker, or any other person, say any thing to excite disturbance of the peace?—Not at all.

Or exciting them to take up arms to aid the French?—No, never.

Or for any other purpose?—No, by no means, I never heard any thing of the kind.

Or to overthrow the constitution?—No.

Mr. *Edward Green* cross-examined by Mr. *Topping*.

If I understand you, you have been several years with Mr. Walker?—Yes, I have known Mr. Walker eleven years.

You were a person, therefore, perfectly well known as one of Mr. Walker's family?—Yes.

Can you take upon you to say, how many people you have ever seen assembled at any one time?—Very likely seventeen, eighteen, or twenty.

Will you take upon yourself to say, you have not seen to the number of fifty or sixty at a time?—Upon the night of the riots there were a good many.

Can you take upon you to say, you have not seen to the number of fifty or sixty assembled?—I will take upon me to swear I have not seen, what I conceive to be such a number as that.

You do not mean to say you can form any accurate estimate of the number?—No.

You were not a member of this society?—I was not.

You never went up to this room, unless you had occasion to speak to Mr. Walker, then you went, and he was called out to you?—I always went in to him.

My friend has asked you as to having heard, or not, expressions used about the king; now can you take upon you to swear what they were doing, from what you heard?—Their conversation seemed to turn upon the question of a reform in parliament.

Whether you mean to swear, that you knew or ever heard from any individual there, any particular expressions used at all, that you can relate to the jury?—I do not.

You were not a member of the society?—No.

Your object in going there was not to learn what they were doing?—No.

When you did go there, it was merely to speak to Mr. Walker about his own business as a merchant?—Yes.

What size is the room in which this society was held?—It is a long room.

And will hold a great number of people, will it not?—It will hold a good many people.

Is it the length, or half the length of this room?—I think it is nearly the length of this room.

Is there not another room upon the same floor; does all the attic story make only one room?—There is another room.

There is another room upon the same floor, besides the room in which the society was held?—Yes, there is.

You said you thought part of it was over the counting house where you are?—Yes, part of it is over that room.

Mr. *Edward Green* re-examined by Mr. *Lloyd*.

The reason why you think the warehouse is over the counting-house is, that both rooms look into Salford?—Yes both rooms come to the end of the building.

Was it any part of your business to see that all the fires were out in this warehouse, and to lock up at night?—It is my general custom to go through the warehouse, and to lock it up.

Did you find any arms lying there, when you went through the rooms to lock all up?—Never.

Did you go into this room generally?—Yes, I did.

And you did not see any arms lying there?—Never.

Mr. *George Duckworth* sworn.—Examined by Mr. *Vaughan.*

Are you acquainted with the house of Mr. Walker, at Manchester?—I am.

You are also acquainted with the warehouse of that house, and the height of it?—Yes, Mr. Walker took me through the house and warehouse a few days ago, to show them to me; I had not seen the warehouse before, only occasionally when I went on business. Mr. Walker showed me the different rooms of the warehouse upon every story. I measured the height of two stories, which appeared to be the highest, and the lowest. The highest room, to the best of my recollection (for I did not expect to be examined here) was nine feet high between the beams, and eight feet six inches high under the beams.

Mr. *Law.*—You did not measure them?—Yes, I did.

Did you make any minute?—No. The lowest story was seven feet six inches high under the beams, and eight feet between the beams; I took a musket out of the room in which Mr. Walker had put the arms, and fixed the bayonet, to shoulder it: when I shouldered it, the point of the bayonet touched the ceiling: if I had thrown it up to my shoulder in the manner they do in the manual exercise, the bayonet would have stuck into the ceiling; I could not poise it. This was the highest room in the warehouse. The rooms in the uppermost story are the highest.

Mr. *George Duckworth.* cross-examined by Mr. *Law.*

You had no idea of giving any account of this at Lancaster, when you made the measurement?—No. I desired Mr. Walker to get some person to make the measurement.

Are you not the attorney for Mr. Walker?—I am, but I did not examine the whole of the evidence. Mr. Seddon examined some of the witnesses.

You say you made no minute in writing of this?—I did not.

Where did you get the musket that you tried with?—Out of the room where Mr. Walker had the small collection of arms, which he informed me were what he had at the time of the riots.

So you had a musket!—Yes.

How many did you see in the armoury?—About a dozen, I believe, of one sort or other. The arms were covered with dust. The room was full of dust. The arms were of different sorts.

There were twelve muskets?—No, not twelve muskets, but different kinds of fire arms.

With bayonets all?—There were some musketoons with spring bayonets.

Mr. *Walker.*—I have an inventory in my pocket, of the arms I had at the time of the riots; I have the arms now. The inventory [offering it to Mr. Law] is very much at your service.

Mr. *Law.*—The beam of this room comes very deep down does it?—About six inches.

Supposing there had been no beams coming down, the room would have been the height of nine feet?—Yes.

What did you measure with?—Mr. Walker had a four-foot rule.

You made no minute at the time?—I did not.

Did you advise a carpenter to be sent for to measure it.—I desired Mr. Walker would get some person to measure it.

Mr. *Duckworth,* re-examined by Mr. *Vaughan.*

What arms were they that you saw there? were they different sorts of arms?—A few muskets, a few musketoons,——

What are musketoons? something of the nature of a blunderbuss?—Yes.

Mr. Justice *Heath.*—There is one objection, I should be glad to hear what Mr. Law says upon it—it struck me early in the course of this business—I did not mention it out of tenderness to the defendant, that he might have an opportunity of clearing his character by calling his witnesses, but it appears to me that this can be nothing else than high treason.

Mr. *Law.*—I submit to your lordship that it is not high treason; but at the same time, if these facts could be so understood, the crown might prosecute as for a misdemeanor; that was settled in the case of the king against Hampden,* and it has been laid down in a great number of cases. I could cite authori-

* The precedent here alluded to, is the trial of Mr. Hampden, for a misdemeanor, in the latter end of the reign of Charles 2d, February the 6th, 1683, before judge Jefferies: when Mr. Hampden was fined by him and the rest of the judges of the King's bench, in the sum of forty thousand pounds!

Mr. Hampden remarked to the court that his father being alive, his fortune was but small, and that merely a life estate. To this Mr. Justice Withins said that they could not take cognizance of what his estate was; the punishment was to be proportioned to the offence, and the chief justice (Jefferies) added, that considering some verdicts, this would be thought a moderate fine.

On passing this sentence, Mr. Hampden was told by the court, that the matter of the offence was such as would have made him guilty of high treason, had there been two witnesses. The essence of a crime therefore (according to this precedent) does not consist in the nature of the act committed, but is to be at one time high treason, at another some-

ties from lord chief justice Hale, and other books, where the crown has prosecuted as for a misdemeanor—that the crown, in cases of felony, might drop some of the circumstances, and prosecute as for a misdemeanor—the crown may elect to prosecute the crime in its mildest form. This is a point of such magnitude, and having been solemnly decided in cases I could refer to in the State Trials, I beg your lordship to have the goodness to let this be found upon a special verdict.

Mr. *Erskine.*—No—no.

Mr. *Law.*—I want to have the fact found—I pray it with the joint advice of some of the most learned persons in the profession, I mean Mr. Serjeant Hill, the attorney and solicitor general.*

Mr. *Erskine.*—Whatever opinion I may entertain upon the argument Mr. Law has offered to your lordship, I will not controvert it here; but I shall insist upon the twelve honourable gentlemen in that box, telling the

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thing else, as the prosecutor is prepared with one or more witnesses to prove it.

Mr. Hampden remained in prison, and under execution for the fine, till the 30th of December 1685, the first year of James the second, when a new witness appearing, he was again indicted for the same offence, but then laid as high treason. "His friends offered money for his pardon to some in power, who were the lord (judge) Jefferies, and Mr. Petre, the sum was six thousand pounds, and that was effectual. It is not possible for a man to suffer more than he did."

"By the help of the money, on condition he would plead guilty to his indictment, he was to come off; whereupon, pleading guilty, he was discharged; paying 300*l.* or 400*l.* to Burton and Graham for the charge of his pardon."

"His abject submission did indeed procure him a pardon; but the shame of such a mean behaviour so sunk and disordered his spirits, that he was never quite right after it; and about ten years after he cut his own throat."

The fine of forty thousand pounds, without regarding the amount of a man's fortune, and the doctrine of converting high treason into a misdemeanor, both stand upon the same precedent—The one is as justifiable as the other.

But is it consistent with the spirit of the laws of England, that the difference of the technical phrases in an indictment, shall put a man into the peril of that judicial discretion which may fine him forty thousand pounds, whether he has it or not, and commit him until it be paid? that is, in other words, which may imprison him for life.

Since Mr. Hampden's trial, and soon after the Revolution, viz. in the 7th of Wm. 3d, an act was passed "for regulating trials in cases of treason, and misprision of treason," wherein it was enacted, that every person accused and indicted for high treason, or misprision of treason, should have a true copy of the whole indictment delivered to him five days at the least before his trial; and that no person should be indicted, tried, or attainted of high treason, or misprision of treason, but by and upon the oaths and testimony of two lawful witnesses, either both of them to the same overt act, or one of them to one, and the other of them to another overt act of the same treason. And that every person, who should be so accused, indicted, and tried, should have a copy of the panel of the jurors returned to try him, delivered to him two days at the least before his trial, and that no evidence should be admitted or given of any overt act, not expressly laid in the indictment. And by an act passed in the 7th of Anne, "for improving the union of the two kingdoms," it was further enacted, that every person indicted for high treason, or misprision of treason, should have a list of the witnesses to be produced on the trial for proving the said indictment, and also a list of the jury, with the names, professions, and places of abode of the witnesses and jurors, together with a copy of the indictment; and that the same should be delivered to the party indicted, ten days before the trial, in the presence of two or more credible witnesses.

But these statutes are no longer a protection for the subject, if he may be proceeded against for a conspiracy, which is only another name for the same accusation, while it removes and destroys these salutary provisions and safeguards of the people.

It was unnecessary for Mr. Walker and the other defendants, indeed it would not have become them, to avoid the verdict of a jury, by resorting to any legal objections; yet if the doctrine laid down in the case of Hampden be at this day law, how many innocent men under a state prosecution, without any previous knowledge of the jurymen and their political partialities, may upon the perjury of a single witness, be thus sent to prison for the rest of their days? and where are the benefits of the acts of William and Anne, if they are to be evaded, under a precedent established before those acts were passed, in the most infamous times, and by the most iniquitous of judges? *Orig. Edit.*

* It seems not a little extraordinary that the attorney-general for the county palatine of Lancaster should pray to let the fact be found upon a special verdict—that is, in other words, to let Dunn's evidence be admitted as true, though even in this stage of the trial, it had been positively disproved by so many respectable witnesses, and Dunn was (while in court) committed by the judge for perjury. The defendants would by this means, have subjected themselves to be punished, as if they had been actually guilty of the crime they were accused of, although they were perfectly innocent of every part of the charge, and were in consequence honourably acquitted.—*Orig. Edit.*

people of England whether aye or no my clients ought to be convicted, after the testimony I am in the course of giving.

Mr. *Law*.—I am equally before those gentlemen and the people of England, for the protection of the people of England; if you rise in this tone, I can speak as loudly and as emphatically—I will prosecute these men with all the liberality of a gentleman, there is nothing has betrayed improper passion on my part, but no tone or manner shall put me down.

Mr. *Erskine*.—I am not accusing Mr. Law of any impropriety or illiberality of conduct at all; I have said nothing to that effect; for the only time in which I have named his name, or hinted at it, I have spoken of him with respect; nothing can be interpreted to the contrary: but a man, if he is not made of stone, must have some feelings in a case of this sort. In whatever way your lordship may rule this point, I shall be satisfied; I might have asked your lordship's opinion early, but the same reason that induced your lordship so liberally and graciously not to communicate your own opinion, governed me.

Mr. Justice *Heath*.—You wish it to go to the jury.

Mr. *Erskine*.—Yes, I most certainly do.

Mr. *Walker*.—I am before my country, and I will go to the jury. In our situation, even the delay of justice would be the height of injustice.

Mr. *Law*.—I cannot find it standing upon any authority but a case in Dyer.

Mr. Justice *Heath*.—It has been always held that the misdemeanor is merged in the felony.

Mr. *Erskine*.—When Mr. Law has heard the evidence out, for we have by no means done, if he should then think it becomes the crown to go on, he will do so, and then let the point of law be reserved in any way most agreeable to your lordship; but I will have the fact before the jury.

Mr. *Law*.—If it ends in your clients' exculpation, I shall be as happy as you; but I shall see that it does so.

Mr. *William Seddon* sworn.—Examined by Mr. *Erskine*.

Have you ever seen this man, Dunn, who has been examined to-day?—I have.

How did it happen that you saw him?—Mr. Walker, Mr. Richard Walker, Mr. Duckworth, Mr. Jackson, and myself, were upon business at my house, on Tuesday the 18th of December last; I was particularly busy in my office preparing for the assizes, but I was desired to come out upon a matter of moment. When I came into the house, I was told by Mr. Walker———

Did Thomas Dunn come?—No, not to my house; I went down to Mr. Richard Walker's with Mr. Duckworth; I stayed there some time: when I came there, I understood Dunn was in the parlour with Mr. Walker, Mr. Richard Walker, Mr. Jones, and Mr. Ridgway jun.

Mr. *Law*.—What is the paper you are referring to?—Notes I took down at the time. Mr. Duckworth, Mr. Jones the attorney, and Mr. Ridgway the attorney, were with me at Mr. Richard Walker's; but Mr. Ridgway and Mr. Jones were not present at any part of the conversation I am speaking to.

Mr. *Erskine*.—Subsequent to this time, did Thomas Dunn, the man who has been examined to-day, come into the house?—He came the second time about eleven o'clock, Mr. Walker, Mr. Duckworth, Mr. Richard Walker, and myself were present—he knocked at the door, and came into the room; he first wanted to speak to Mr. Walker alone, or to Mr. Richard Walker; on being desired to speak, he repeatedly objected, and declared he would say nothing before so many witnesses; Mr. Walker told him he must speak before them, or not at all—he then desired Mr. Walker to sit along side of him, and he would esteem it an honour, and tell him every thing. Mr. Walker refused. Dunn then stood up and desired Mr Walker to give him his hand—I am just now informed that I said this happened on the 18th of December; if I did, I made a mistake, it was on the 18th of last month.

Did you take these notes at the time?—I took down the latter part of the conversation, which I have not yet come to, from Dunn's own lips, I made a minute of this immediately after he was gone.

Mr. *Erskine*.—Then I conceive I am allowed to desire the witness to look at that paper to refresh his memory.

Mr. *Law*.—How soon afterwards did you put it down?—This part [the witness holding a paper in one hand] the moment he was gone; the other [showing another paper] I took from his own lips. Dunn stood up and desired Mr. Walker to give him his hand, and he should esteem it a greater honour than if George the third did. This Mr. Walker again refused, and told him he had sworn falsely against him; Dunn acknowledged he had, and that he had not had a quiet night for thirteen weeks. He then rose from his chair, and threw himself upon his knees, and seized both Mr. Walker's hands, and exclaimed with a great deal of emotion, "I have done you injustice, and I beg your pardon;" he then cried excessively, and addressing himself to the defendant Mr. Walker, said, "My heart is almost broken, I am unhappy; I have certainly done you wrong;" he then went down upon his knees to Mr. Walker again. Mr. Richard Walker then put this question to him, Who instigated you? Dunn replied, "I am afraid to tell that, I have not slept a contented night these thirteen weeks together, on your brother's account. Do not you know I wished him well? I have lodged an indictment against him, but it is a damn'd

eternal falsehood." At this stage of the business he again cried very much, threw himself down upon a table, and was in an apparent agony for about ten minutes. When he recovered he seemed very composed and sedate, much more so than he was before. As soon as he lifted his head from the table (after he had done crying), Mr. Thomas Walker asked him if he did not feel easier? to which he made no particular answer, but said, "The charge was taken down wrong at Manchester." Mr. Richard Walker then put this question to him, "How could you, when you say you wished my brother so well, be prevailed upon to accuse him so wrongfully?" to which Dunn answered, "that is a very cross question." The same question was put again by Mr. Richard Walker, to which Dunn said, "I want Mr. Walker to forgive me, and I will do him justice hereafter. I wish you would get a constable to take me up and let me be tried." Mr. Walker then said, "you admit you have done me an injury?" to which Dunn replied, "yes, I have, every person knows it, except Yorke. What I swore in my first examination, and at Lancaster, were very different, not at all alike. I was called before the grand jury three times; I will never go to Lancaster at the assizes, and let Griffith and the rest of them do as they please and be damned." Mr. Richard Walker repeated this question to him, "Who instigated you to do wrong?" Dunn said, "I won't answer such questions." I then asked him what day he had charged the offence as committed? His answer to me was, "between the 29th and the 30th of January, 1793." Dunn then, of his own accord, speaking to Mr. Walker, said, "What shall I say to you, I have done you an injury, and I am sorry, what can I say more?" I then said to him, "who set you on?" Dunn answered, "I know I behaved ill, I was bribed to it, that is plump; but I will not tell who did it, that shall for ever rest in my own breast." After the above conversation was ended, which I took down *verbatim*, in question and answer, Dunn left the room.

Thomas Dunn called up again.

Mr. Justice *Heath*.—Well Dunn, you have heard this evidence; did that pass, or any part of it?

Dunn.—No, nothing at all—yes, something of it passed.

Mr. Justice *Heath*.—How much of it passed?—I went there when I was intoxicated, the same as I am now.

Mr. *Law*.—Have you been out of the court?—Yes, I have.

Mr. Justice *Heath*.—How long have you been intoxicated?—Not very long; I have my recollection about me, though it may seem to the Court that I may be ill, or may not.

Mr. Justice *Heath*.—Were you intoxicated when you gave your evidence just now?—I was not.

Mr. Justice *Heath*.—You have been intoxicated since then?—Yes.

Mr. *Law*.—How much of that conversation is true? there is some part you say is true.—I was at Mr. Walker's house about a fortnight hence; I went in to Mr. Walker; I was brought in by a constable of Manchester, and upon that I met Mr. Richard Walker, brother to Mr. Thomas Walker.

What is the constable's name?—One Twiss. Mr. Richard Walker asked me, Dunn, do not you recollect that you have done an injury to my brother? or to that purpose; well, says I, upon the first examination I lodged the first indictment against him.

Mr. Justice *Heath*.—Has any body been with you while you were out?—No.

Mr. *Erskine*.—I should be glad to trace where he has been—I do not believe he has been out of court.

Mr. Justice *Heath*.—Where have you been?—I have been down the town.

Mr. Serjeant *Cockell*.—He was told to stay in court.

Mr. Justice *Heath*.—Where did you dine?—Below the change; I do not know the house.

Mr. Justice *Heath*.—Is it a house you frequented before?—Yes.

Mr. *Erskine*.—Who dined with you?—The man's name is Foster.

Any body else?—Yes, Mr. Sidebottom.

Who else?—Nobody.

Who are Sidebottom and Foster?*

Mr. *Law*.—You say Mr. Seddon and Mr. Duckworth were by at Seddon's house?—No, he was at Mr. Walker's; all that passed was this; he brought me, this Twiss, he intended to take me in, and to bribe me over; he gave me some money upon it, on Mr. Walker's account, drunk or sober I will speak the truth.

Mr. Justice *Heath*.—I do not know how we can examine a man that is drunk.

Mr. *Law*.—What were you to do for that money?—To go out of the way, and not appear here at these assizes.

Did you beg Mr. Walker to sit along side of you, and say you would esteem it as great an honour as if George the third did?—I never said that upon my oath.

Mr. Justice *Heath*.—How can you Mr. Law examine him, after he has told you he is intoxicated; he has made himself so exceedingly drunk, it is impossible to examine him.

Mr. *Erskine*.—He denied positively he had ever been at Mr. Walker's, or was ever lured by any body to make a confession.

Mr. *Law*.—Did you ever confess that the charge you made against Mr. Walker, was unfounded and false?—Never.

Mr. *Erskine*.—Then what this gentleman

* Foster and Sidebottom were in the list of witnesses for the crown, delivered in court at the commencement of the trial, by the attornies for the prosecution.—*Orig. Ed.*

has said is false, is it?—I do not know; when when was that?

Mr. *Seddon.*—On the 18th of March.

Mr. *Law.*—Did Twiss bring you there upon that occasion?

Dunn.—Yes.

Is he in any employ for Mr. Walker?

Dunn.—He was employed five months upon this business.

Mr. *Erskine.*—Hear this read over, and stand up, and remember you are in the presence of God.

[Mr. William Seddon read his notes again.]

Mr. *Erskine.*—Is that true?—No, I never entered into any part of the house, only the door, and which was just opened for me.

Mr. *Erskine.*—Mr. Seddon is swearing falsely, is he?—I cannot tell what he may do; he is swearing false if he swears that.

Mr. *Erskine.*—Did you go down on your knees, and cry for ten minutes?—You may as well tell me that I am a woman.

Did you do that?—No, all he asked me, all I told him was this—Did not you lodge an information, so and so, and some particular words; you were drunk: I said, I will correct it next morning, that is all that ever happened.

You never said you had wronged Mr. Walker, and went down upon your knees?—I never did.

Mr. *Duckworth* called again.—Cross-examined by Mr. *Law.*

Were you present when this man, Dunn, answered the questions put to him, in the manner Mr. Seddon has sworn just now?—I was.

To the best of your memory and recollection, is the account that Mr. Seddon has given of it, the truth?—I looked it over, and it agreed with Mr. Walker's, Mr. Richard Walker's, and my recollection.

Mr. *Duckworth* re-examined by Mr. *Erskine.*

I ask you—(though the attorney for Mr. Walker, you are a Christian, I trust)—I ask you, in the presence of God Almighty, is it true or false?—It is true.

Mr. *Duckworth* cross-examined by Mr. *Law.*

How came you all there, and how came Twiss to bring this man?—Mr. Thomas Walker and I had gone up to Mr. Seddon's. Mr. Jackson, I think, was there when I went in. Mr. Seddon was in his office. When we had been there a few minutes, Mr. Richard Walker came in, and said a message had been sent to his house, that Dunn wanted to go to Barlow, to see his brother, Mr. Walker: we agreed that Mr. Jones and Mr. Ridgway, junior, who had nothing to do with the prosecution, should be requested to be present, to hear what passed. Mr. Seddon and I followed after.

Do you think it professionally proper, when you knew that an indictment was found upon the testimony of this witness, and that he was to be the witness to sustain it at the next assizes, for you two, the attorneys for the defendant, to have him alone with you, without any person on his behalf, and to examine him in this manner?—We thought it fitter that he should say what he chose to say, in the presence of some other person, than Mr. Seddon and myself; and therefore we desired Mr. Jones and Mr. Ridgway, two gentlemen of unimpeachable character, to be present. I did believe Dunn had perjured himself, from the knowledge I had of the cause; therefore, I thought it right, that what he chose to say, as a confession of his guilt, should be heard. When Mr. Jones and Mr. Ridgway had heard what he had to say, and had been gone from Mr. Richard Walker's about half an hour, there was a knock at the door; Dunn came in again alone; then Mr. Seddon and I, from necessity, and not from choice, went into the room.

Had Mr. Jones and Mr. Ridgway taken his examination?—They had, about half an hour before this time.

Mr. *Erskine.*—Did you send for this man?—No.

Did you employ any body to bring him to you?—No.

But when a man had sworn falsely against Mr. Walker, you thought it right to hear his confession of his guilt?—I did; I thought he had perjured himself.

Dunn says, that Twiss does work for Mr. Walker?—I never heard that he did.

Mr. *Walker.*—Dunn said, Twiss was employed by me in this business.

Mr. *Law.*—A man, who is your fustian-cutter, is employed by you.

John Spink sworn. Examined by Mr. Serjeant *Cockell.*

Have you any acquaintance with Mr. Thomas Walker?—I have none at all.

He is a gentleman who is a perfect stranger to you?—Yes; I only know him by sight.

Have you any acquaintance or connexion with him?—None at all.

Do you know a man of the name of John Twiss?—Yes.

I understand he and you are neighbours?—We are.

Did you happen, on the 18th of March, 1794, to go to Twiss's?—I did.

Was that matter of accident?—It was an accident.

Who did you find at the house of Twiss?—I found Thomas Dunn.

That man behind you?—Yes.

Be so good as to relate what passed at that time.—Dunn said, he was sorry that he had injured Mr. Walker's character in the manner he had done; that he had never seen any thing that was bad by him. He asked me to go to Barlow-hall with him that night, to see Mr. Walker.

Did that request come from him to you?—It did; I told him I would not go with him at that time of night, but if he chose, I would go with him the next day; he said, no, he would see Mr. Walker before he slept; I said, he had better send to see whether Mr. Walker was in town or not, to save him the labour of going. Esther Ottey went to see whether Mr. Walker was at home; she went to Mr. Thomas Walker's house in town; the servant told her he was in town, but he was gone out to tea and supper; when she came back, Dunn desired Esther Ottey and me to go to Mr. Richard Walker's, and see if he was at home.

Did you, or did Twiss, at this time, force the conversation, or was it entirely from himself?—He said it voluntarily of himself.

Did you draw him on by any thing?—Not at all——

Mr. *Erskine.*—Speak up.

One of the Jury.—It does not signify, we have been satisfied a long while.

—I went out with Esther Ottey to Mr. Richard Walker's; he said, if Thomas Dunn wanted to see him, he might come up in the course of half an hour, and he would let his brother know. I suppose he did let him know. Esther Ottey went up to see if he was come in half an hour. He was not at home; she waited a little time; then we took Dunn there, John Twiss and me, and left him at Mr. Richard Walker's door.

Was he carried in custody at all?—No, he desired us to go with him.

And you went and left him at Mr. Richard Walker's?—Yes.

What time in the evening was this?—About nine o'clock, as near as I can guess; it might be half an hour before, or half an hour after.

Did you observe, during the conversation you have been relating, whether Dunn appeared to be cool or was agitated?—He seemed very much to want to go.

Did he appear to be much moved?—He seemed to be very much affected for doing what he had done; he seemed to relent.

Were you in company, or did you see Dunn upon the 28th of March?—No, I saw him on the 20th.

At what time of day?—About five o'clock.

What passed then?—He was in at John Twiss's again; Twiss sent for me in; Dunn said he had seen Mr. Kinnaston, and he had challenged him with being acquainted with John Twiss, which he said he denied.

Did you see whether he had cried, or observe any thing of that sort?—Yes, I saw tears in his eyes several times.

John Spink cross-examined by Mr. *Wood.*

You do not know how long he had been at Twiss's, when you found him there on the 18th of March?—No.

Nor how much liquor he had drunk?—No, I do not.

Do you know whether he had drank any?—He had had a little, but he was quite sensible; he knew what he was saying and doing.

Just as much as he knows now?—He was not half so much in liquor then as he is now.

How came Twiss to have him in his care?—I suppose Dunn came to seek Twiss.

What connexion has Twiss with Mr. Walker?—I do not know that he has any.

Is not he a workman of Mr. Walker's?—I dare say he is.

How long had he been after this man to get hold of him?—I cannot tell any thing about it.

When you saw him again, he was with Mr. Walker's clerk?—On the 19th, Dunn said Kinnaston had challenged him with being with Mr. Walker's clerk.

Was he with Mr. Walker's clerk then?—He was; but I was not there till late in the evening.

Was he drunk then?—No, as sober as I am now.

Was it late?—It was about nine o'clock.

He did not appear to have drank any thing?—He might have had some drink, but he was perfectly sober.

John Twiss sworn.—Examined by Mr. *Chambre.*

You live at Manchester, do not you?—Yes

Are you one of the special constables of Manchester?—Yes.

There have been several appointed within the town, two hundred or thereabouts, I believe?—I do not know just the number.

Do you know Dunn the witness who has been examined?—I know this man Thomas Dunn.

Were you with him on the 18th to March?—I was.

How happened you to come together on that day?—Thomas Dunn called at my house; I was lying on the bed; I was sick; he came, and said he had a shilling to spend.

You did not take him into custody?—No.

It is not usual, is it, for people to come to a special constable for the purpose of being taken into custody?—I went along with him to Welch's; he began reflecting upon his bad conduct—that he had used Mr. Walker very ill.

Did he begin of his own accord?—Yes, he did; he repeatedly said, he had used Mr. Walker very ill, that he was sorry for it, and would ask Mr. Walker pardon. I said, if thou hast used him ill, thou had better ask his pardon in the public newspaper.

Did he express any desire to see Mr. Walker?—Yes he did, and he would see him, and he wanted me to go to Barlow-Hall with him, and he would pay my expenses.

How far is Barlow-Hall from Manchester?—I do not know—I was never there.—I said it was rather too late; if he would content himself, I would go with him in the morning.

Was Spink with you at that time?—Spink was in my house, we came from Welch's; Spink came into my house, he desired Spink likewise to go along with him.

Did you ever give him any money, or make him any promises, to induce him to say any thing upon the subject?—Never a farthing in my days, but otherwise—I told him I would not, I never gave him a halfpenny in my life; I lent him thirteen shillings at different times—part of the money before I knew any thing about Mr. Walker's affair, that was on the 20th of October last, on a Sunday night; I lent it to him and Sidebottom, and they went and spent it; it was on a Sunday night.

After that time, did you ever lend him any thing?—I lent him nine shillings since.

When was the last time you lent him any money?—The last time was the 21st of March.

How long before the 18th of March, had you lent him money?—I had never lent him a halfpenny, but four shillings.

Had you lent him any thing between the 20th of October, and the 18th of March?—Not a halfpenny, nor never promised him any thing.

You did not go with him to Barlow that night?—No—Dunn proposed to Esther Ottey, to go and see if Mr. Walker was at home—I was not taking every notice in the world. I think she said, I saw Mr. Walker in the town to-day, had not somebody better go and see if he is in Manchester; he desired her to go, she went, when she came back the information, to the best of my knowledge was, she said Mr. Walker is gone out to supper, and it will be late before he returns. Upon this Dunn was determined he would see him he said before he slept; he sent her a second time to go to Mr. Richard Walker, and John Spink and she went to the best of my knowledge; they returned back, and told him Mr. Richard Walker was at home, and Spink and me might bring him up; we went and brought him up, and left him at the door.

Was all this done entirely upon his own solicitation, and at his own request?—Upon my oath it was at his own request, not one word of interrogation.

Had you ever any sort of conversation with Mr. Thomas Walker?—I never spoke to Mr. Thomas Walker since he was born, but at one time; there was a fire at a new building at the bottom of Bridge-street. I did not see a constable, or any one assisting but myself. The gentlemen were beating up for the marine corps. Mr. Thomas Walker and Mr. Richard Walker came up, and a brutish kind of a man knock'd another man down in the sludge. Mr. Thomas Walker said to me, "do you know that man?" "I do not, sir." That is every word I ever changed with Mr. Thomas Walker in my life.

Mr. *Erskine* to *Dunn*.—What do you say to this now?

Thomas Dunn.—I say it is false, every word of it.

John Twiss cross-examined by Mr. *Topping*.

You are I believe a fustian-cutter of Mr. Walker's?—By business I am.

How long have you worked for Mr. Walker?—I worked for Mr. Walker—that is I work for Esther Ottey, and she has had work from that house for about six years.

You was saying something about the ninth of January?—I have not told you aught about it yet.

Were you with Dunn upon the ninth of January?—I was.

Where?—At the White Bear opposite the Infirmary; from thence we took a walk to Pendleton Pole.

You were with him upon the ninth of January?—Yes, and the eighth likewise.

Had you been drinking with him at both these public-houses?—On the eighth I drank share of a pint of porter, and left him

How came you to be seeking his company, upon the eighth and ninth?—He fell into my company on the eighth; I had been at Liverpool, and delivered a message from Luke Foster, and that was the reason I saw him.

Upon the 20th of October, or thereabouts, you had lent this man some money?—Four shillings.

Had you any manner of knowledge of Dunn?—Seeing him last assizes.

And yet, upon the 20th of October, you lent him money?—Yes, I did; I have lent many a four shillings to different people.

Having no knowledge of him, but what you had at the last assizes here, you lent him four shillings upon the 20th of October?—Peter Sidebottom was in company with me.

You say you were at Liverpool; did not Dunn go from Manchester to Liverpool with you?—Not with me.

You went after him?—No.

Will you swear, you never went to Liverpool after Dunn?—At what time?

Will you swear you never went to Liverpool after Dunn?—I have been there after him, within these eight days—with a subpœna in my pocket to subpœna him.

You were with him drinking upon the 8th and 9th of January?—Yes.

Upon the 18th of March you were again with him at Welch's?—Yes, I told you he called upon me and, I went off the bed with him.

Who was in company with you at Welch's? John Spink, and me, and one James Scott.

When you were with Dunn at this public-house, do you remember Mr. Walker's clerk, Moses Eadon, coming?—I do, but not upon the 18th.

Was that upon the 19th?—Yes.

And the 20th too, I believe, you were drinking together?—I never saw him before the close of the evening of the 20th, when he came to our house.

Was Moses Eadon, Mr. Walker's clerk, with you upon the 18th, or not till the 19th?—Upon the 19th.

Upon Eadon's coming in, did not Eadon go into another room, and did not you tip Dunn upon the shoulder, and desire he would go with you into another room?—I did.

How much liquor had you together at this public-house upon the 19th?—At this time we had had very little.

How much money was spent, before you parted?—I cannot possibly tell.

Do not you know, that fourteen or fifteen shillings were spent by Mr. Walker's clerk at this meeting upon the 19th?—Mr. Walker's clerk never paid a penny to my knowledge—I paid most of it.

You treated Dunn, did you?—I paid the shot, and treated him.

How much did you pay?—I cannot tell to a shilling or two.

Was it twenty shillings?—No.

Was it fifteen shillings?—I cannot say.

Was it above half a guinea?—It was.

Was it not fifteen shillings?—It might be for what I know, I cannot tell.

Did not you tell Dunn, you wished he would get out of the way, till the assizes were over?—Never, no such matter.

You swear, that at no time you ever told Dunn, you wished he would get out of the way, till the assizes were over?—Never, in my days—I wished otherwise.

Do you mean to swear upon your oath, that you did not advise him to remain at Preston?—I did not; he said he would go to Preston, for he said, he would not be subpœna'd by any party; of all things, I said, you will stand forth at the trial; he said, I will, but I will not be subpœna'd by any party.

Upon the 19th of March he told you he would not be subpœna'd by any body?—That was on the 20th, and he said the same on the 21st in the morning.

When did you lend him this other money?—I lent him one part on Wednesday night, somewhere about the 19th, and he had the remaining part some on Thursday, and the remaining part on the Friday morning.

How much has he had in the whole from you?—Thirteen shillings, from the first to the last.

And all this, after this meeting at Welch's, the Hare and Hounds?—No, he had only nine shillings then.

Have you never received from any person whatever, either the money that you spent at the Hare and the Hounds, or the money you lent Dunn?—I have not upon my oath.

Nor no promise?—Nor no promise of any thing. Dunn promised he would pay me my money back again.

You never had, from any other person living, a promise of re-payment of the money lent?—No, never.

Have you never received any money back that you spent?—No, never, from man, woman, nor child.

Mr. *Erskine* to Mr. *Duckworth*. When you heard that it was reported, that this Dunn had run away, and was not coming to the assizes, did you take any step in consequence?—I had heard he was gone to Preston and would stay there till the assizes. We were much afraid he would run off. I went to Preston to desire Mr. Cross, the prothonotary, would devise some means of keeping him in his custody by a bailiff, or in some other manner. Mr. Cross would not do that, but advised me to subpœna Dunn; we sued out a subpœna, and endeavoured to serve him with it. Mr. Twiss was sent to Liverpool, to endeavour to subpœna him there. He could not be found. It had been reported that we had bribed Dunn to keep out of the way.

Mr. Justice *Heath*. I cannot think there is much in the thirteen shillings, for if Dunn was so corrupt that thirteen shillings would influence his testimony, his credit is not worth much.

Mr. *Thomas Jones* sworn.—Examined by Mr. *Lloyd*.

Were you at Mr. Walker's on the 18th of March?—I was.

Was Dunn, the man who stands behind you, there?—Yes, he was, he came soon after I got there.

Did you hear him say, he had sworn true or false, against Mr. Walker? what did he say about Mr. Walker?—When he first came into the room, he seemed as if he was rather intoxicated. I thought he reeled across, from the door towards the window; he sat himself down, and in a little time a question was proposed, I think by myself; Whether he had not something to say to Mr. Walker? he said, he had wronged Mr. Walker. I asked him in what manner he had wronged Mr. Walker? he said, he had accused him falsely. Immediately as he said that, he fell down upon his knees, and begged his pardon. Mr. Walker desired him to get up. Several other questions were put to him, in what manner he had falsely sworn against Mr. Walker, he did not give any answer to them.

Was he brought into the room by force, or did he appear of his own free-will?—I understood he came of his own free-will; he knocked at the door, and was introduced into the room; he said he had been bribed to do what he done.

Did he seem affected—was he in tears?—He seemed very much agitated when he entered the room. I asked Dunn, who had bribed him, he would not give me an answer to that question.

Mr. *Jones* cross-examined by Mr. *Law*.

Was Mr. Twiss, the constable, there?—He was not there. The persons present in the room, when I was there, were Mr. Walker, Mr. Richard Walker, Mr. Ridgway the attorney, myself, and Dunn.

I only wanted to know whether Twiss was there; you need not mention who were there, for the purpose of confirming what you say.

Did he seem to you, so far recollected at the time he talked with you, as to be aware of the import of what he was saying?—Yes, I thought he was, perfectly.

Did he specify any particulars, in which he had accused Mr. Walker falsely?—He did not; I asked him that question; he did not give an answer to it; he seemed very desirous of communicating what he had to say to Mr. Walker alone; he seemed very loth to say any thing to any questions put to him, while Mr. Ridgway and I were there; he frequently desired that Mr. Walker and he might confer together; Mr. Walker did not choose to trust himself with him alone.

You have no sort of doubt in your recollection, that Dunn used those words that he had accused Mr. Walker falsely?—He did.

Was there any conversation, respecting the indictment that was depending at Lancaster at that time?—I did not hear any thing said about an indictment. There was a question put to Dunn, either by Mr. Walker or Mr. Ridgway, I believe, by Mr. Ridgway, whether he had ever heard Mr. Walker damn the king? he said, he never had, he had heard him speak disrespectfully of him. I asked him in what manner he had spoken disrespectfully of him; but to that question he gave no answer.

Was there any mention made at that time of any assemblies held at the house of Mr. Walker, for the purpose of exercising with arms?—Not a syllable.

Was any thing said of Mr. Yorke being at Mr. Walker's? be so good as tell me all that passed at that meeting.—There was a question asked about Mr. Yorke; it was asked by Dunn himself—instead of directly answering Mr. Walker's questions, he seemed to evade them by putting the question whether Mr. Yorke had been in town or no? or whether he had seen him within a few days? Mr. Walker did not give him any answer to that question.

Nothing was said then about Yorke's having been at the meeting at Mr. Walker's house?—No.

How long might Dunn be with you in the whole?—I fancy he was about twenty minutes or half an hour in the room; the questions I have mentioned, were frequently put to him.

Did you take any thing down in writing of what passed?—I did that night when I got home.

Have you a minute of it?—I have.

Be so good as to let me look at that minute; it is not from any doubt of your giving me the best of your recollection, I wish to see it for another purpose.

[Mr. Jones gave Mr. Law his minutes.]

You mention here, I see, that you went with Mr. Richard Walker, Dunn was soon introduced, by whom was he introduced?—I think Mr. Richard Walker showed him into the room, if I recollect right; somebody knocked at the door very soon, after we got there; I understood it was Dunn; he came immediately into the room.

Who introduced him?—I think Mr. Richard Walker opened the door when Dunn came into the room. I was doubtful towards the end of the business, whether he was drunk, or only feigned to be so; for towards the latter end of it he appeared more steady, and seemed perfectly collected in every thing he said; he was particularly urgent with Mr. Walker to be alone with him. Finding that could not be obtained, he wished to be with the two Walkers; that was refused; then he desired he might be with Mr. Richard Walker alone, which was also refused, and Mr. Walker peremptorily told him he would not suffer himself to be in his company alone. The man seemed very much vexed at it, and he came out with a threat upon the occasion; he said Mr. Walker would repent of it, for it would be a damned deal worse for him, let him bring as many witnesses as he would.

Mr. *Erskine.*—Mr. Thomas Dunn, is this true or false?—False.

This gentleman is perjured then—it is all false?—Yes.

Mr. *Law.*—I know the character of several of the gentlemen who have been examined, particularly Mr. Jones; I cannot expect one witness alone, unconfirmed, to stand against the testimony of these witnesses; I ought not to expect it.

Mr. Justice *Heath.*—You act very properly, Mr. Law.

The Jury immediately gave their verdict Not Guilty.

Mr. *Vaughan.*—I pray that Dunn may be committed.

Mr. *Erskine.*—We will undertake to prosecute him for perjury.

Mr. Justice *Heath.*—Let him be committed; and I hope, Mr. Walker, that this will be an admonition to you, to keep better company in future.

Mr. *Walker.*—I have been in no bad company, my lord, except in that of the wretch who stands behind me; nor is there a word or an action of my life, in which the public are at all interested, that I wish unsaid, or undone, or that under similar circumstances I would not repeat.

Mr. Justice *Heath.*—You have been honourably acquitted, sir, and the witness against you is committed for perjury.*

Immediately after the above verdict was given, the same jury was again impanelled,

* Mr. Walker was an eminent merchant at Manchester, and a truly honest and respectable man; and nothing can show the fever of those times, more than the alarming prosecution of such a person upon such evidence. It is not to every attorney-general, that such a case could have been safely trusted.—The conduct of Mr. Law was highly to his honour, and a prognostic of his future character as a judge.—*Ed. of "Erskine's Speeches."*

and sworn to try Mr. Walker upon the separate indictment, charging him with damning the king, and saying, he would as soon take his head off, as tear a bit of paper.*

Thomas Dunn, the only evidence for the Crown on this indictment, having been committed for perjury, the jury instantly returned their verdict, Not Guilty.

The Jury were again impanelled and sworn to try James Cheetham, upon the separate indictment against him, for damning the king, and wishing he was guillotined, but the witness for the Crown, Mr. Dunn, having been committed for perjury, the jury immediately found the defendant Not Guilty.

Upon Saturday, the 5th of April 1794, a bill of indictment was preferred against Thomas Dunn, for perjury; and found by the Grand Jury, of which the following is a list:—

Thomas Butterworth Bayley, esq. of Hope, Foreman.
Nicholas Ashton, esq. of Woolton.
William Assheton, esq. of Cuerdale-lodge.
Edward Buckley, esq. of Lancaster.
Daniel Bayley, esq. of Hope.
Joseph Brookes, esq. of Everton.
Charles Gibson, esq. of Lancaster.
Geoffrey Hornby, sen. esq. of Preston.
John Fowden Hindle, esq. of Blackburn.
Henry Hulton, esq. of Preston.
Robert Hesketh, Esq. of Lancaster.
John Machell, esq. of Pennybridge.
Thomas John Parke, esq. of Highfield.
Edmund Rigby, esq. of Grange.
Abraham Rawlinson, esq. of Ellel-hall.
William Rawlinson, esq. of Ancoats.
Nicholas Starkie, esq. of Frenchwood.
Robinson Shuttleworth, esq. of Preston.
Henry Sudell, esq. of Blackburn.
John Walmesley, esq. of Preston.
James Whalley, esq. of Clark-hill.
Joseph James Vernon, esq. of Preston.

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* Mr. Walker had the most incontrovertible evidence to prove, he was in London at the time Dunn swore that the words laid in this indictment, were spoken by Mr. Walker in Manchester.—*Orig. Ed.*

Shortly after the preceding trial, Mr. Walker published a pamphlet intituled, "A Review of some of the Political Events which have occurred in Manchester during the last five years; being a Sequel to the Trial of Thomas Walker and others, for a Conspiracy to overthrow the Constitution and Government of this Country and to aid and assist the French, being the King's Enemies. By Thomas Walker." I extract from this publication the following account of Dunn's trial:—

"Dunn was tried at the autumn assizes 1794, upon an indictment containing no less than ten several perjuries, which he had sworn, upon the trial against Mr. Walker and others.

To prove the falsehood of the facts sworn to by Dunn, various witnesses were called; and first, as to his reading and writing. The rev. Mr. Griffith (the magistrate before whom Dunn's informations were taken, and who upon them issued warrants against Mr. Walker, Mr. Paul, Mr. Jackson, and several others, for high treason) swore, that he had attested informations signed by Dunn in his presence, and that he had no doubt of his being able to read and write. This was confirmed by Mr. Griffith's clerk, Mr. Paynter, who had seen Dunn write his name, and had also seen letters which he believed to have been written by him.—Two other witnesses deposed to the same effect.

Mr. Jones and Mr. Ridgeway, two gentlemen of great worth and respectability, stated that they saw Dunn at the house of Mr. Walker's brother, on the 18th of March; that Dunn fell upon his knees, and begged Mr. Walker's pardon; said that he had injured his character; that he had accused him falsely, and that he had been bribed to do what he had done: and that when Mr. Walker refused to be alone with him, Dunn threatened Mr. Walker, and said, that it should be worse for him. Several other witnesses were called, who proved the other facts in the indictment.

The jury found Dunn guilty; and the sentence of Mr. Justice Rooke was, that he should stand once in the pillory, and be imprisoned for two years in Lancaster Castle."—*Review, &c. p. 89, note.*

602. Trial of ROBERT WATT for High Treason. At a Special Commission of Oyer and Terminer, holden at Edinburgh, August 14th, 15th, 22nd, 27th, and September 3rd: 34 GEORGE III. A. D. 1794.*

Proceedings at a special session of Oyer and Terminer, held at Edinburgh, on Thursday the 14th of August, 1794, before Ilay Campbell, lord president of the college of justice; Robert Macqueen, lord justice clerk; Alexander Murray, lord Henderland; David Rae, lord Eskgrove [afterwards lord justice clerk]; John Swinton, lord Swinton; sir William Nairn, lord Dunsinnan; Alexander Abercrombie, lord Abercrombie; James Montgomery, lord chief baron; and hon. Fletcher Norton, senior baron.

PROCLAMATION being made, the commission was opened by Mr. Knapp, the clerk of the commission. It was as follows:

COMMISSION OF OYER AND TERMINER.

George the third, by the grace of God, king of Great Britain, France and Ireland, defender of the faith, &c., to our right trusty and right well beloved cousin and counsellor David, earl of Mansfield, our justice general, of that part of our kingdom of Great Britain called Scotland, or our justice general for the time being; Ilay Campbell, esq. of Succoth, president of our college of justice, or the president of our college of justice for the time being; James Erskine, esq. of Alva, senior senator of our said college of justice; Robert M'Queen, esq. of Braxfield, our justice clerk, or our justice clerk for the time being; Alexander Murray, esq. of Henderland; David Rae, esq. of Eskgrove; John Swinton, esq. of Swinton; sir William Nairn, of Dunsinnan, baronet; and Alexander Abercrombie, esq. of Abercrombie, commissioners of justiciary; James Montgomery, esq. of Stanhope, chief baron of our court of exchequer, in the aforesaid part of our kingdom aforesaid, or our chief baron of our court of exchequer aforesaid, for the time being; and Fletcher Norton, esq. senior baron of our said court of exchequer, greeting:—

Know ye, that we, by virtue, and according to the form of the statute, made in the seventh year of the reign of our royal predecessor, Anne, late queen of Great Britain, &c. intituled "an Act for improving the union of the two kingdoms," have assigned you, and any three or more of you, (of whom we will that any of you the said David earl of Mansfield, or our justice general for the time being; Ilay Campbell, or our president of our college of justice for the time being; Robert M'Queen, or our justice clerk for the time being; Alexander Murray and David Rae shall be one) our justices, to inquire by the oath of good and lawful men of our shire or county of Edinburgh, in that part of Great Britain called Scotland; and by other ways, means, and methods by which you shall or may better know (as well within liberties as without), by whom the truth of the matter may be better known and inquired into of all high treasons and misprisions of high treasons within the shire or county aforesaid, as well within liberties as without, by whomsoever, and in what manner soever, and by whom, when, how, and after what manner done, committed or perpetrated; and of all other articles and circumstances concerning the premises, and every of them or any of them in any manner whatsoever; and the same high treasons and misprisions of high treasons, according to the form of the aforesaid statute, to hear and determine. And therefore we command you, that at a certain day and place within the said shire or county, which you, or any three or more of you (of whom we will, that any of you the aforesaid David earl of Mansfield, or our justice general for the time being; Ilay Campbell, or our president of our college of justice for the time being; Robert M'Queen, or our justice clerk for the time being; Alexander Murray and David Rae shall be one), shall appoint for that purpose, you meet together, and diligently make inquiries about the premises, and hear and determine all and singular the said premises, and do and fulfil them, doing therein what to justice appertains, saving to us the amerciaments and other things from thence to us accruing; for, we firmly command all and singular, sheriffs officers, ministers, and our subjects, by virtue of these presents, that they be attending, advising, aiding, and assisting to you in the execution of the premises as it becomes them. We command also by virtue of these presents, the

* Taken in short-hand by Blanchard. For corrections of some errors in the original edition of this trial, I am indebted to Mr. Robert Hamilton, who was one of the counsel for the prisoner. Another but very imperfect account of this trial, was published, purporting to have been "taken in short-hand by an English barrister."

William Preston, of Gorton.
James Kerr, of Blackshiells.
John Davie, of Gavieside.
John Davison, of Ravelrig.
Charles Brown, of Coalstown.
John Balfour, the younger, of Pilrig.
John Newton, of Curriehill.
James Pitullo, of Hayfield.
Alexander Reid, of Ratho.
Alexander Keith, of Ravelston.
Simon Fraser, of Ford.
Thomas M'Millan, of Soonhope,—esquires.

The *Lord President* then addressed the grand jury in the following words:—

Gentlemen of the grand jury;—The duty which you are called upon at this time to discharge, however important, must be in a great measure new to you. It will not therefore be improper, that I trouble you with a few words, in order to point out what I conceive to be the leading principles and objects of the commission under which you are to act.

At the same time you will not fail to keep in view, that whatever suggestions may come from me, in the way of general information, chiefly upon matter of law and of legal form, that the nature of the business may be understood; to you alone, gentlemen, belongs the right of applying these to the individual charges when laid before you, and to the evidence adduced in support of those charges, as it will rest with you to determine by the answer which you are to make, agreeably to the solemn oaths which you have taken, and to the honourable dictates of your own minds, whether there is, or is not, sufficient ground for any farther proceedings against the parties accused.

Hitherto, gentlemen, it has been our good fortune to be little acquainted with high treason, or the modes of inquiring into it; in so much, that our knowledge of that crime is derived almost only from the Statute-book, with the comments upon it by learned and eminent writers on the law, and the history of trials, mostly of an ancient date. The reason is obvious, few attempts having been made in our time to disturb the public tranquillity; the people of this country were satisfied, and good cause they had to be so, with the blessings which they enjoyed, under a system of laws, and a form of government, the essence of which is liberty. Every man's right,—every man's franchise;—the fruits of his industry;—the safety of his person;—the exercise of his religion;—his liberty;—his fame;—all have been secured to the utmost extent of his wish.—What fair pretence then could any man have to seek for a change?

During the same period, and as a necessary consequence of these inestimable advantages, the country has continued to prosper more and more; for notwithstanding the wars, in which, from various causes, and chiefly from the turbulence or ambition of our neighbours, we have been too often engaged, it is a fact indisputable, that this country has advanced not slowly, or in a slight degree, but rapidly and conspicuously, in commerce, in agriculture, in every useful art, in population, and in wealth, so that the growing income, and increased industry of the country, have not only kept pace with, but far exceeded any additional burthen arising from the necessary increase of national expenditure.

Gentlemen, it is not my intention, nor do I think it in any degree necessary, in addressing myself to you, to enlarge upon these topics, or to consume your time, by going into minute details concerning the British constitution, and the admirable manner, in which the powers of the state, legislative and executive, are combined and balanced, whereby the liberty of every individual is completely secured; I mean that liberty which alone can be enjoyed by men living in a state of society; civil liberty, which, as the celebrated Montesquieu observes, is founded in security, which consists in every man's doing, not what he wills but what he ought to will, the right of doing whatever the laws permit, and no more; for if one could do what the laws forbid, he would no longer be possessed of liberty, because every other man would have exactly the same power.

But, gentlemen, it will perhaps be said, why do I make these observations? Has any sudden change of circumstances happened? Is there any imminent danger of our being deprived of those inestimable rights which have been described? I hope not; we still have the same laws, the same constitution, the same gracious sovereign upon the throne who has reigned for years past. Recent events too, have shown that our sailors and our soldiers, are not yet deficient in valour, nor their officers in good conduct, and it is not to be doubted, that the great body of the people, have sufficient good sense and spirit, to resist the madness of innovation, and effectually to oppose the wicked attempts of enemies, without or within.

But, gentlemen, it is to be remembered, that we are engaged in war, with an inveterate, a cruel, and a vindictive enemy; an enemy, whose object seems to be, to spread desolation far and wide; whose leaders, if they ever were in quest of liberty, have been very unsuccessful in finding it; who upon the ruins of their ancient monarchy, and even of their own improved constitution, have now raised up something, which one is at a loss to name or understand, unless it be either complete anarchy, or the most ferocious tyranny.

It may be said, what is all this to the state of Great Britain?—Perhaps nothing at all, if we take care that the contagion does not reach us. But if it be true, as has been asserted, that they have, by a formal decree, established their National Convention, as a grand committee of general insurrection for the purpose of overthrowing every existing government in Europe; if it be true that they

have abettors in this country, who either in connexion with France, or from similar views and imaginations, formed in their own minds, are busy in promoting the same wild and destructive projects here, is it not high time that we should look with some degree of anxiety to our own situation, and to our safety?

It is difficult for us to conceive, that British subjects, who are not desperate or insane, should be so lost to all sense of duty; so blind to every fair interest that men can have; or so abandoned to wickedness, as to enter deliberately and knowingly into the horrid conspiracy of destroying the constitution of their country, and rising in rebellion against their sovereign. Yet report says, that such daring plans have been formed, and you, gentlemen, the grand jury of the county of Edinburgh, are met this day for the purpose of making a solemn, dispassionate, and candid inquiry, in the manner directed by law, whether any such treason has been committed within the district to which you belong, and whether the persons now meant to be charged ought or ought not to be put upon trial for so atrocious an offence.

If I have expressed myself strongly against the crime which is undoubtedly the highest of any, as it goes not merely to a partial breach of the law, or to an injury against individuals, but tends to the utter subversion of all law and government, and the dissolution of the bonds of society, I hope it will not be understood, that I mean in any degree to excite your passions against those who may have the misfortune to be accused, so as to lead you to a hasty or ill-founded opinion against them: on the contrary, it is my duty to admonish you against undue prepossession, and to request that you may keep in view, that the presumption of innocence is an essential and a valuable rule of criminal jurisprudence, which rule is not in any degree weakened by the atrocity of the crime.

Gentlemen, as to all previous inquiries before the House of Commons or elsewhere, concerning this alleged treason, and all reports made upon those inquiries, if any of you have had occasion to read or to hear of them, you are to lay them out of your minds, as you cannot proceed upon any thing extra-judicial, but can only take under your view, the proofs which are actually brought before you in a legal shape.

At the same time it is necessary for you to keep in view, that it is not your province to try the parties accused, or any of them. You are only to hear the evidence on the part of the Crown, for the purpose of satisfying you, whether such probable circumstances of guilt appear against the prisoner, as to justify the sending him to another jury, who are appointed by law to hear the evidence on both sides, and to say whether the person charged be guilty or not of the crime imputed to him in the indictment; and, if upon such trial, any advantage can be derived to the prisoner, either from legal defences, or from favourable circumstances in point of fact, it will be the duty of the Court, as well as of those acting for the parties, to take care that the same be fully stated and understood. Your presentment, if you find a true bill, is not of the nature of a conviction, but is an authority to the accusation, merely to the effect of bringing the prisoner to a fair and full trial. On the one hand, it is not your duty upon slight surmise, or mere suspicion, to bring any person into the disagreeable predicament of being tried for his life upon a charge of high treason.

On the other hand, you are not tied down so strictly to all the niceties of evidence, as if you were trying the whole issue, but may and ought to proceed upon what you think a probable and reasonable cause for putting the accused party on his trial. Such is the description of your duty, as given by every constitutional writer on this important branch of the law.

By an act of the 7th of king William, two witnesses are required to make out a charge of treason, but two witnesses are not necessary to each act, for the statute expressly says, that it is enough, if "either both of them swear to the same overt act, or one of them to one, and the other to another overt act of the same treason," so that one witness to each of two different acts of the same treason is sufficient.

I presume, gentlemen, all of you know, that in consequence of the Union between the two kingdoms of Scotland and England in 1707, the English law of treason, and the forms of proceeding with respect to inquiring into, and trying the crime, came to be adopted by us as a matter of high expedfency and justice, that the subjects of both parts of the United Kingdoms, who were bound to the same duty of allegiance might be under the same law, and tried in the same manner, in case of any alleged breach of that duty. Accordingly it was so settled by the act 7 queen Anne, c. 21, which is the authority under which this present commission of Oyer and Terminer has been issued by his Majesty in the precise form and manner prescribed by that statute. The method of proceeding under such a commission, is likewise well known. One advantage the prisoner certainly has by it, namely, that of passing through the hands of two different juries before he can be convicted. The king's advocate in every other case, exercises the power of a grand jury in Scotland, and it is believed no advocate has ever yet abused that power. But in cases of high treason, none of us will regret that so high and momentous a trust is committed to no individual whatever.

The treason law of England, which is now also the law of Scotland, was fixed by a statute, in the 25th year of Edward 3rd, from the preamble of which we learn, that, before his time, and while matters rested upon the footing of

common law, the definitions of treason were various and unsettled, different opinions being occasionally entertained upon the subject, whereby the safety of individuals was much endangered, as they did not precisely know what actions were treasonable, and what were otherwise. It was therefore thought proper, in the reign of that wise and able prince, that the descriptions of treason should be precise and clear, and with that intent, this important statute was made, which arranges and describes the crime under different heads. It is needless to trouble you with the whole of them, as there are two only that have any application to the present business. The first is in these words, "When a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir." The second, "Or if a man levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere, and thereof be proveably attainted of open deed by the people of their condition."

Whether the indictment be laid upon the one or the other of these heads, an overt act must be charged and proved.

As to the first, we are told by lord chief justice Hale, in his excellent book upon the Pleas of the Crown, that "Compassing the death of the king is high treason, though it be not effected; but because the compassing is only an act of the mind, and cannot of itself be tried without some overt act to evidence it, such an overt act is requisite to make such compassing, or imagination, high treason." And judge Foster, in his Crown Law, another book of great authority, says, "The care the law hath taken for the personal safety of the king is not confined to actions, or attempts of the more flagitious kind, to assassination, or poison, or other attempts, directly and immediately aiming at his life. It is extended to every thing wilfully and deliberately done, or attempted, whereby his life may be endangered; and therefore the entering into measures for deposing or imprisoning him, or to get his person into the power of the conspirators, these offences are overt acts of treason, within this branch of the statute; for experience has shown, that "between the prison and the graves of princes the distance is very small."

As to the second head, both these learned writers agree, that a bare conspiracy, or consultation of persons, to levy a war, is not sufficient to bring the case within that branch of the statute; but they also agree, that in certain circumstances such a conspiracy or consultation may amount to an overt act of compassing the king's death, and so to bring the case within the first branch. Thus lord chief justice Hale says, "An assembly to levy war against the king, either to depose or restrain, or enforce him to any act, or to come to his presence, to remove his counsellors or ministers, or to fight against the king's lieutenant, or military commissionate officers, in an overt act proving the compassing of the death of the king; for such a war is directed against the very person of the king, and he that *designs* to fight against the king, cannot but know at least it must hazard his life."

And judge Foster tells us, "Every insurrection which, in judgment of law, is intended against the person of the king, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him; these risings all amount to levying war within the statute: whether attended with the pomp and circumstances of open war or no. And every *conspiracy* to levy war for these purposes, though not treason within the clause of levying war, is yet an overt act *within the other clause of compassing the king's death.* For those purposes cannot be effected by numbers and open force, without manifest danger to his person."

In like manner, judge Blackstone, in speaking to the second branch of the statute, says, that "A bare conspiracy to levy war does not amount to this species of treason; but, if particularly pointed at the person of the king, or his government, it falls within the first, of compassing or imagining the king's death." In short, a conspiracy to levy war against the king for the purpose of restraining him in any shape, is held equivalent to a conspiracy against his life.

Another species of insurrection may take place, which not being so immediately pointed against the king, but only by consequence, such as an insurrection to raise the price of wages; to open prisons; to destroy meeting houses; to throw down all inclosures; to alter the established law in any particular; or to redress any supposed grievance, it was more doubtful whether this sort would fall under any clause of the statute. By construction of law, however, even this on account of its tendency, has been held to be a levying of war under the second clause, if the rising has actually taken place; but a bare conspiracy to effect such a rising is not held as an overt act of compassing the king's death, the parties concerned not being supposed to have in contemplation any attack against the king, or his royal authority, so as to put his person in hazard, unless this also be charged and proved.

These distinctions have at different times been the subject of a good deal of discussion; but they seem to be founded in a just construction of the treason law.—In every case, therefore, of a charge for high treason upon the first branch of the statute, *i. e.* that of compassing the king's death, when a conspiracy or consultation to levy war is alleged as the overt act, it is necessary to inquire what sort of rising was intended, and what was the object or purpose in view.

It does not belong to me to say, nor do I

know what precise matters will be brought in evidence before you upon the bills of indictment, which are to be the subject of your consideration; but in general, as high treason is the charge, and as circumstances will probably be brought in view tending to make it appear that the parties accused were engaged in a conspiracy, or had formed plans and projects of rising in hostility against the king and his government, perhaps, under the mask of reform, but no matter what the pretence was; you will first satisfy yourselves as to the evidence of the fact, and the nature of the design, and then you will consider what the probable consequences would have been, had such a design been carried into effect. If you see reason to think that the object of those concerned, from the measures which they took, was, by force of arms and of numbers, to seize the government of the country, and of course, to supersede the king's authority, and to take the power of the state into their own hands for a time, you can scarcely hesitate to be also of opinion, not only that the king's person would, by the execution of so desperate a project, have been put into the most imminent danger, but that the probable consequences would have been to deluge the land with blood!

If the case appear to you in that light, you will consider whether it is not your duty to find a bill. If it appear to be of a different description, your answer will be accordingly. The character which all of you bear, leaves not the smallest room to doubt that the public will be completely satisfied whatever your determination may be.

Mr. *Anstruther* moved, that Arthur M'Ewan, William Bonthorn, John Fairley, William Brown, Robert Orrock, and Martin Tod, prisoners, now detained for high treason, might be admitted witnesses on behalf of the crown, and be conveyed before the grand jury to give evidence on bills of indictment against Robert Watt, David Downie, and John Edmonds Stock, for high treason; which was ordered accordingly.

The before-mentioned witnesses were then brought into court to be sworn, but refused to be sworn according to the English form; upon which the lord president swore each of them according to the Scottish form.

Then the grand jury requested, that Mr. Knapp, the clerk of the commission, and Mr. Warrender, the crown agent,* might attend them during their examination of the bills of indictment.

Mr. *Anstruther* moved the Court for the same. It was accordingly ordered.

The Court then adjourned until seven of the clock the same evening, in order to give the grand jury time to consider of the bills; but at the same time the lord president intimated the wish of the Court that they would not over hurry themselves, but if they should not be agreed at that time, that then the Court would adjourn over to the next morning.

The same day at seven o'clock the Court met, pursuant to their adjournment, when the same commissioners were present. The grand jury then came into court, and their names being called over, they presented two bills of indictment. One against Robert Watt and David Downie, and the other against John Edmonds Stock, for high treason, endorsed, True bills. The Court then ordered the sheriff to have the bodies of Watt and Downie brought from the Castle and set to the bar, to be informed that there were bills of indictment found against them. They were accordingly brought to the bar, and were informed by the Lord President, that they were entitled to have counsel to defend them, and that the Court would assign them any they would name; but it appearing to the Court that they were not then prepared to name their counsel, the Court indulged them till eleven o'clock the next day to do so; and it was ordered by the Court in the mean time, that their agents should have access to them in prison, at any reasonable times. The Court also informed them, that they were entitled to a copy of their indictment, and list of the witnesses to be produced against them, and a list of the jury intended to try them, delivered ten days before their trial. Then a copy of their indictment, together with the caption of the Court, and a list of the witnesses, containing their names, professions, and places of abode; and a list of the jury, containing their names, professions, and places of abode were then delivered to each of the prisoners in Court.

Then the Court adjourned until eleven o'clock on Friday morning.

Proceedings of the Court on Friday the 15th instant at eleven o'clock in the forenoon.

Present,—The lord president, the lord justice clerk, lord Henderland, lord Swinton, lord Dunsinnan, and the lord chief baron.

The two prisoners, Watt and Downie, were then put to the bar.

Robert Watt desired the Court to assign as counsel for him, William Robertson,* esq. and William Erskine, esq. and in case of the non-attendance of both those gentlemen on his behalf, then he named Archibald Fletcher, esq. instead of either of them who might be absent; and he named John M'Ritchie as his agent, which the Court consented to, and ordered accordingly.

Then the prisoner David Downie delivered in a list of the names of several advocates, and desired the Court would assign any two of them to assist him in making his defence.

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* As to this, see the cases of the Regicides in this Collection, Vol. 5, p. 972; the earl of Shaftesbury, Vol. 8, p. p. 772, 773; and Colonel Maynard, Vol. 14, p. 477.

* Afterwards Lord Robertson.

The Court named, at his request, John Clerk, esq. and Archibald Fletcher, esq. to be his counsel, and in case either of them should not be able to attend, Robert Cullen,* esq. in their stead, and named John Dillon to be his agent, which the Court ordered accordingly. Then it was ordered by the Court, that the several counsel and agents should have access to the prisoners at all seasonable hours; at the same time, giving them leave to take the advice and the assistance of any other advocate whom they might think proper, and if any of those advocates so appointed should not be able to attend, that then the Court would, at the requisition of the prisoners, assign any other they should name. The prisoners were then informed, that they would be brought up to plead to their indictment on Wednesday the 27th instant, but that they were not then to be tried. The Court then adjourned to Friday the 23d instant, at 11 o'clock in the forenoon.

Proceedings of the Court on Friday the 23d August.

Present,—The lord justice clerk, lord Dunsinnan, lord Abercrombie, and the lord chief baron.

Mr. *William Robertson.*—My lords, I have been appointed by your lordships as one of the counsel for Robert Watt, but I wish to submit to the Court whether, as I have the honour of being solicitor-general for his royal highness the prince of Wales, for Scotland, I can be assigned as counsel for a prisoner who is indicted for high treason. The duties of the station I hold seem to me to be repugnant to those I might be called upon to exercise as counsel for the prisoner at the bar. I hope your lordships will think this a sufficient excuse for my not appearing as counsel for him.

The Lord Chief Baron.—I hope notice has been given of this to the prisoner, that he may name some other person for the appointment of the Court to supply your place, as your objection is very proper.

Mr. *William Erskine.*—My lords, I attend as counsel for the prisoner Robert Watt, along with Mr. Robertson. I beg leave to inform the Court that, in consequence of early notice having been sent to Robert Watt, that Mr. Robertson could not attend, he has named Mr. Robert Hamilton to be one of his counsel. To which the counsel for the crown readily consented, and he was assigned accordingly.

Lord Advocate.—The purpose of your lordships adjourning to this particular day, was on the motion of the counsel for the prosecution; they at that time having reason to believe it would have been in their power to have brought some business before your lordships to-day, but they have been disappointed in their expectations. The person they intended to have brought to your lordships bar to-day is not yet taken. I have therefore nothing more to trouble the Court with to-day, and am sorry that the Court have had the trouble of attending.

Lord Chief Baron.—Then it will be proper for the Court to make the order of adjournment.

Mr. *Erskine.*—My lord, I observe in this indictment against Watt, there are several papers founded on by the counsel for the prosecution alleged to be of a treasonable nature, which he is accused of having written and published. I should submit, by the forms of this court, whether we are not entitled to see those papers before the prisoner is put upon his defence.

Mr. *Anstruther.*—It is almost unnecessary for me to say one word in answer to what is proposed by the counsel for the prisoners; such a proposition has never been made before in any such case. The prisoner is entitled to a copy of the indictment and a list of the witnesses to be produced against him, but he is not entitled to see the evidence the counsel for the crown mean to produce; they will produce it in proper time: at present, with all due deference, it is not in the power of the Court to call upon the prosecutors for a disclosure of the written testimony or the oral evidence they mean to produce. Therefore this motion cannot have success. If the counsel for the prisoner desire to have any paper produced which they rely on as evidence, they may, by means of a subpœna *duces tecum*, call upon any witness to produce such papers at the trial; but before, it is impossible to have the papers in our possession, or to have a disclosure of the evidence on which we mean ro rely.

Mr. *Erskine*—I do not know that I am entitled to press my present motion. It is well known to your lordships, that the counsel for the crown could not by the laws of this country produce a single paper against a prisoner on his trial, which his counsel have not had an opportunity of seeing. The gentlemen on the other side have asserted that a different rule prevails in England. Your lordships will judge between us.

Lord Chief Baron.—The counsel for the prosecution may consent to a production of particular papers in their custody.

Lord Advocate.—Unquestionably, so far as any papers in our custody are proper to be produced, or shewn, we can have no objection to their being produced to the prisoner.

Lord Chief Baron.—They may call for it as evidence in defence.

Mr. *Anstruther.*—They are to do as they think fit.

Lord Chief Baron.—What those papers are, Mr. Erskine wishes to see, I know nothing about. I have not seen the indictment; whatever way it may be laid, the prisoner is entitled to see nothing without the consent of the counsel for the crown—they are to pro-

* Afterwards Lord Cullen.

duce whatever evidence they think proper.—If the prisoner's counsel think it material, the mode of coming at it is laid down by the counsel for the crown, that they may have the common process, and may be prepared to make use of it, when the trial comes on.

Mr. *Anstruther.*—We propose to bring up the prisoners on Wednesday next, in order to their being arraigned. The act of parliament allows ten days from the time of delivering the copy of the indictment, which was done on Thursday last. Ten clear days and the two Sundays carry us to Wednesday the 27th instant, as the earliest day upon which they can be arraigned.

The Court was then adjourned to Wednesday the 27th of August at eleven o'clock in the forenoon.

Wednesday August 27th, 1794,

The Court met according to adjournment, when the following commissioners were present:—

Lord Justice Clerk, Mr. Baron Fletcher Norton, Lord Eskgrove, Lord Swinton, Lord Dunsinnan and Lord Abercrombie.

The prisoners were then brought to the bar and arraigned

Lord Justice Clerk—Gentlemen of counsel for the prisoners, have you any motion to make?

Mr. *Fletcher.*—Formerly your lordship appointed Mr. Clerk and myself as counsel, and in case either of us could not attend, the prisoner requested Mr. Cullen might be appointed, and your lordship did appoint Mr. Cullen in the place of Mr. Clerk for David Downie.

Mr. *Knapp.*—He was appointed provisionally.

Mr. *Hamilton.*—There is a witness, who is extremely important for the defence of the prisoner, (to wit) Watt, for whom I appear; his name is Kennedy; he is a witness for the crown; but I understand, he is not to be found.—I wish to know if the counsel for the crown have any reasonable expectation of getting him brought forward as a witness for the crown.—If they have, he will be also ready for the prisoner.

Mr. *Anstruther.*—Kennedy is named among the list of witnesses, and the counsel for the crown have made every inquiry, both in England and here, to have his person; whether they will be successful in finding him I cannot say, but most undoubtedly, no means have been spared for the purpose.

Mr. *Hamilton.*—I have received a satisfactory answer from the counsel for the crown; the reason for my motion was that the witness's testimony is of great consequence for the defence of the prisoner, and if so I apprehend I should be well founded in grounding my motion for the delay of this trial.—I will not say I shall not in a subsequent stage of this trial make such motion. I understood by the law of England, when a witness is not present, who it is necessary should be produced, if there is any expectation of getting him, I should be entitled to move for a delay of the trial, for such time as might be necessary to bring such witness forward.

Mr. *Fletcher.*—My lords, as Mr. Downie, my client, has the same dependance upon the testimony of Kennedy as Mr. Watt has, if there is any delay granted to the one, I should move the same may be granted to the other.

Mr. *Anstruther.*—It is not necessary for me in this state of the business, to object to a motion not now made, but announced as intended to be made; but I wish to be candid, and to inform the counsel for the prisoners, that if ever such a motion shall be made, I shall oppose it to the utmost of my power; and I have no scruple in stating one of the grounds on which I shall oppose the motion.—I wish the Court to be informed, that this Mr. Kennedy is a person, who upon the first discovery of the treasonable acts charged on the gentlemen at your lordships bar (and who is now stated to be a material witness), thought proper to elope from this country, and to fly from justice, which was in search of him; from the 1st of May to the present hour, none of the officers of justice, either in Scotland or England, ever could lay hands upon, or get sight of Kennedy, or gain the least intelligence where be is to be found,—rewards have been offered for his apprehension, which have not yet had effect;—therefore, whenever a motion to delay the trial, shall be made upon the ground of his absence I shall oppose it, and the more so, if it is made three weeks after the notice of the day of trial. If the counsel for the prisoners know where he is to be found, I can only say, we shall be extremely obliged to them for such information. and I will answer for it, if he is to be found. he shall be brought in custody to the bar.

Mr. *Hamilton.*—I have had an answer which is satisfactory; I only mentioned that in case it was likely for him to be produced, I might perhaps make such a motion.

Mr. *Dundas.*—The counsel for the prisoners will exercise their own discretion as to their motions in future; I can only say, if such a motion is to be made, and it should succeed, the trial may be deferred for ever: large rewards have been offered for Kennedy's apprehension in vain.

Mr. *Hamilton.*—My motion was in case the counsel for the crown had any reasonable expectation of getting him.

Lord Justice Clerk.—Have you any other motion to make?

Mr. *Fletcher.*—I understand the defendants are to be separately tried.

Lord Advocate.—They must be separately tried.

Mr. *Knapp.*—If they join in their challenges, they may be tried together.

Mr. *Anstruther.*—With respect to that, your lordships know, on trials for high treason, every prisoner may challenge thirty-five. It becomes extremely inconvenient to try two persons together, because, if they differ in their challenges, it would be attended with great difficulty. The counsel for the crown, therefore, mean to desire two several panels for the trial of the two prisoners; if they agree, they would be bound down to one challenge for both. We do not ask them to do such a thing.

Mr. *Fletcher.*—I believe they will not agree in their challenges. What we wish to know, as counsel for the defendants, is, which is to be tried first?

Lord Advocate.—I have no objection at all to state to Mr. Fletcher, that our intention is to bring Mr. Watt to trial first.

PRECEPT FOR THE PETIT JURY.

Edinburgh, to wit. } ROB. M'QUEEN, esq. justice clerk of our lord the king; David Rae, esq. of Eskgrove; John Swinton, esq. of Swinton; sir William Nairne, of Dunsinnan, baronet; Alexander Abercrombie, esq. of Abercrombie; commissioners of justiciary of our said lord the king; and Fletcher Norton, esq. senior baron of our said lord the king, of his court of exchequer, in that part of Great Britain called Scotland, justices of our said lord the king, assigned by letters patent of our said lord the king, under the great seal of Great Britain, made by virtue of, and according to the form of the statute, made in the seventh year of the reign of the lady Anne, late queen of Great Britain, &c. intituled, "An Act for improving the Union of the two Kingdoms," to us and others our fellows justices of our said lord the king, in the said letters patent named, and to any three or more of us and them made and directed (of whom our said lord the king willed that one of us, the said Robert Macqueen and David Rae, amongst others in the said letters patent named should be one), to inquire by the oath of good and lawful men of the county Edinburgh, in that part of Great Britain called Scotland, and by other ways, means, and methods, by which we and others, our fellows justices aforesaid, should or might better know (as well within liberties as without) by whom the truth of the matter may be better known and inquired into, of all high treasons and misprisions of high treasons within the county aforesaid (as well within liberties as without), by whomsoever, and in what manner soever, and by whom, when, how, and after what manner done, committed, or perpetrated, and of all other articles and circumstances concerning the premises, and every of them, or any of them, in any manner whatsoever; and the same high treasons and misprisions of high treasons, according to the form of the aforesaid statute, to hear and determine; To the sheriff of the said county of Edinburgh, greeting; We, on the behalf of our said lord the king, command you, that you do not omit, by reason of any liberty in your bailiwick, but that you cause to come before us and others our fellows justices aforesaid, in the said letters patent named and assigned, or before any three or more of us and them (of whom our said lord the king willed, that one of us, the said Robert Macqueen and David Rae, amongst others in the said letters patent named, should be one), at the town and city of Edinburgh, in your said county, on Wednesday the third day of September next, twelve good and lawful men, of the neighbourhood of the parish of St. Giles, in your said county, every one of whom must have lands and tenements within your said county, of the yearly value of forty shillings sterling at least, by whom the truth of the matter may be the better known and inquired into, and who are not of kin to Robert Watt, late of the said parish of St. Giles, in your said county, wine merchant, to try upon their oath, whether the said Robert Watt be guilty of a certain high treason, whereof before us, and others our fellows justices aforesaid, he stands indicted or not, because the said Robert Watt hath put himself upon that jury, and have you then there the names of the said jurors, and this precept. Given under our hands and seals, at Edinburgh aforesaid, this twenty-seventh day of August, in the thirty-fourth year of the reign of our sovereign lord George the third, by the grace of God, king of Great Britain, France and Ireland, defender of the faith, and so forth.

(S. L.) ROB. MACQUEEN.
(S. L.) DAVID RAE,
(S. L.) JOHN SWINTON.
(S. L.) ALEX. ABERCROMBIE.
(S. L.) WILLIAM NAIRNE.
(S. L.) FLETCHER NORTON.

Lord Justice Clerk.—The Court will now adjourn to Wednesday next, at eight o'clock.

The rest of the judges then agreed to adjourn to Wednesday, at eight o'clock in the morning precisely.

Proclamation was then made accordingly, by the cryer of the court.

Wednesday, September the 3d, 1794.

Present—Lord President, Lord Chief Baron, Lord Justice Clerk, Mr. Baron Norton, Lord Eskgrove, Lord Swinton, Lord Dunsinnan, Lord Abercombie.

Counsel for the Crown.—The Lord Advocate [Dundas, afterwards lord chief baron], Mr. Solicitor General [Blair, afterwards lord president], Mr. Anstruther, Mr. Dundas.—*Agent,* Mr. Warrender.

Counsel for the Prisoner.—Mr. Hamilton, Mr. Erskine.—*Agent,* Mr. M'Ritchie.

Clerk of Arraigns.—You, the prisoner at the bar, these good men that you shall hear

called, and personally appear, are to pass between our sovereign lord the king and you, upon the trial of your life and death; if, therefore, you will challenge them, or any of them, your time is to speak unto them, as they come to the book to be sworn, and before they are sworn.

The Jury were then called, as follows:—

George Gardner—*Prisoner*, I challenge him.
John Bell—*Prisoner*, I challenge him.
Tho. Muir, esq.—*Prisoner*, I challenge him.
Alexander Houston, did not appear.
Benjamin Yule—*Prisoner*, I challenge him.
Donald Smith—*Prisoner*, I challenge him.
James Carfrae—*Prisoner*, I challenge him.
Sir W. Forbes, bt.—*Prisoner*, I challenge him.
Rob. Young—*Prisoner*, I challenge him.
Alex. Wallace—*Prisoner*, I challenge him.

William Mitchell was called, and a certificate of bad health was produced, from Mr. Cheyne, a surgeon; Mr. Mitchell was accordingly excused by the Court.

Adolphus Scales; he was from home when summoned. There is a letter from his brother, that he had been absent for three weeks.

To the summoning officer, Andrew Scott.—Did you leave a summons at Mr. Scales's house?—Yes.

What number is it?—I will tell you; No. 15; summoned the 28th of August last.

Was he at home?—No.

You left it with the servant?—Yes. (No farther notice was taken by the Court.)

Patrick Inglis; a melancholy event had prevented his attendance.

James Mansfield did not answer.

1. David Clark was sworn in.
2. William Hunter was sworn in.
3. James Mitchell was sworn in.
4. John Scougall was sworn in.
5. William Sibbald was sworn in.
6. John Horner was sworn in.
7. Thomas Hutchinson was sworn in.
8. Archibald Campbell was sworn in.
9. George Kinnear was sworn in.
10. William Fraser was sworn in.
11. John Andrew was sworn in.
12. William Lamb was sworn in.

Clerk of Arraigns.—Count these. He then called over the names of the jurors sworn; they were accordingly counted.

Clerk of Arraigns.—Cryer, make proclamation.

Cryer.—Oyez! If any one can inform my lord the king's advocate general, or this inquest now to be taken, of the high treason whereof the prisoner at the bar stands indicted, let them come forth, and they shall be heard, for now the prisoner stands at the bar upon his deliverance, and all others that are bound, by recognizance, to give evidence against the prisoner at the bar, let them come forth and give their evidence, or else they forfeit their recognizance, and all jurymen that have been called, and have appeared and are not sworn, may depart the court.

Clerk of Arraigns.—Robert Watt, hold up your hand! (which he did.)

Clerk of Arraigns, to the Jury.—Gentlemen, you that are sworn, look upon the prisoner, and hearken to his charge. He stands indicted by the name of Robert Watt, late of Edinburgh, in the county of Edinburgh, not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved as a false traitor against our lord the king, and wholly withdrawing the cordial love, and true and due obedience, fidelity, and allegiance, which every true and faithful subject should, and of right ought, to bear towards our lord the king, and wickedly, maliciously, and traitorously contriving to break and disturb the peace, and to change, subvert, and overthrow the government happily established in this kingdom, and to excite, move, and raise insurrection and rebellion, and to depose our lord the king from the government of Great Britain, and to put him to death, on the first day of March last, and on divers other days.

The first overt act is, that he, on the first of March, did maliciously, wickedly, and traitorously meet, conspire, consult, and agree to cause and procure a meeting of divers subjects, to be assembled and held, within this kingdom of Great Britain, under the name of a Convention, for the purpose of assuming to themselves, at such meeting, the powers of government and legislation over this kingdom (independent, and in defiance of the authority, and against the whole of the parliament of this kingdom), and of subverting and altering the rule and government, and deposing our Lord the King from the government and royal state.

The second overt act is, that he met, and consulted to instigate, incite, encourage, and persuade the subjects of our lord the king to cause and procure divers meetings and assemblies, for the purpose of choosing delegates from among themselves, to meet in a meeting, under the name of a convention, to be held for the purpose of assuming to themselves the powers of government and legislation, and of deposing the king.

The third overt act is, that he met and assembled to choose a convention to be held, the object of which was, to redress national grievances by usurping to themselves the powers of government and legislation of this kingdom, in defiance of the authority of parliament.

The fourth overt act is, consulting to bring about in such a convention to be held without the consent of parliament, an alteration and change in the mode of representation, and instigating and inciting persons to send delegates to such convention for the same purpose.

The fifth overt act, that he conspired with other false traitors by force to oblige the king

to alter the measures of government, and to comply with certain unlawful demands, propositions, and measures to be thereafter made by him, relating to the king's administration of the government of this kingdom.

The sixth overt act is, that he conspired to raise and make insurrection and rebellion against our lord the king.

The seventh overt act is, that he conspired to oblige the king by force to comply with certain demands to be made by him, and consent to the introduction of regulations and measures respecting the government of this kingdom.

The eighth overt act is, that he conspired, consulted, and agreed with other false traitors, to seize and take the castle of Edinburgh into his possession by force of arms, with guns, pikes, spears, battle-axes, and other offensive weapons, and to provide leaders to be appointed and instructed by him, and to lay in wait and surprise the forces of our lord the king, stationed in the said castle of Edinburgh, and to attack and fight them, and to take into his possession by force the public banks and excise office, and to seize and imprison the justice clerk, the lords of council and session and justiciary, and the lord provost of Edinburgh.

The ninth overt act is, that he did instigate and incite divers subjects of our lord the king, to consent to, and approve the last mentioned traitorous proposals, and to aid and assist him in effecting and carrying the same into execution.

The tenth overt act is, that he conspired and consulted with other false traitors, to procure arms for the purpose of arming himself and others to enable him to resist the king in the legal exercise of his royal power and authority.

The eleventh overt act is, that he conspired to raise and levy money, the better to carry into effect his traitorous purposes aforesaid.

The twelfth overt act is, that he composed, printed, published and dispersed certain malicious, wicked and treasonable papers and addresses among the subjects of our lord the king, inciting them to contribute and subscribe money for the use of him and other false traitors, and to appoint collectors to collect and receive such money, and to remit and pay the same to him, with intent that such money should be accounted for and disbursed in such way as should be most calculated to make and raise insurrection and rebellion against the king.

The thirteenth overt act is, that he hired and employed John Fairley to carry and disperse such papers as last aforesaid, and delivered him a great quantity for that purpose, with intent to incite the subjects of our said lord the king, forcibly to resist the king in the exercise of his authority, and to assist in prosecuting an attempt to be made to subvert the government.

The fourteenth overt act is, that he instructed the said John Fairley to instigate and incite the subjects of our said lord the king to give assurance and support, and to remit such money as should be collected to him.

The fifteenth overt act is, that he employed the said John Fairley to instigate and incite the subjects of our said lord the king to procure arms, and to arm themselves to resist the king, and to aid and assist him in subverting the government.

The sixteenth overt act is, that he employed William Brown to make and procure arms for arming himself and other false traitors, and paid them money for the same.

The seventeenth overt act is, that he employed Robert Orrock to make arms for the same purpose.

The eighteenth overt act is, that he continued and got into his possession arms, and kept them concealed in his dwelling house, in readiness to be made use of for the traitorous purposes aforesaid, against the duty of his allegiance, against the form of the statute in such case made and provided, against the peace of our said lord the king, his crown and dignity.

Upon this indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his trial hath put himself upon God and the country, which country you are. Your charge is to inquire whether he be guilty of this high treason whereof he stands indicted or not guilty; if you find him guilty, you are to inquire what goods and chattels, lands, and tenements he had at the time the high treason was committed, or at any time since; if you find him not guilty, you are to inquire if he fled for it, you are to inquire of his goods and chattels as if you had found him guilty; if you find him not guilty, and that he did not fly for it, you are to say so and no more, and hearken to the evidence.

Mr. *Dundas*.—Gentlemen of the jury, this is an indictment against the prisoner at the bar for high treason. As the officer has read the several overt acts of high treason, and the several acts of the defendant, to carry into effect his treasonable purposes, it becomes necessary for me to do no more than state the substance of this indictment, which, if I do not deceive myself, I shall be able to state in almost one sentence.

The indictment states that the prisoner conspired to endeavour to call a convention, which convention was to usurp the powers of legislation in this country, and to take into their own hands the redress of certain national grievances which this defendant alleged to exist. The indictment states that the defendant has conspired to procure arms to be placed in the hands of the subject against the sovereign, to resist the exercise of royal authority, to compel his majesty to change the measures of his government, to force him to adopt such plans and such schemes as to this defendant and his associates it might seem expedient to propose.

Gentlemen, that I may not waste your time, as the task of explaining the law devolves into the hands of a person better qualified, I will state, finally, gentlemen, that the defendant had conspired with other associates, to concert measures to overawe and restrain the conduct of the government, and to endanger the person of his majesty, which, as the language of the indictment, and which the law states, is to compass and imagine the death of the king—to this indictment the defendant has pleaded not guilty. You will hearken to the evidence, and give your verdict accordingly.

Mr. *Anstruther*.—My lords, and gentlemen of the jury;—It is my duty upon the present occasion, to lay before you the state of the case which the counsel for the crown think they shall be able to prove against the prisoner at the bar.

In doing this, gentlemen, it will be necessary for me to bespeak a considerable portion of your attention, and that of the Court; because such has been the happy state of this country, such has been the peace and prosperity with which this nation hath been blessed, under that constitution which the prisoner at the bar is charged with attempting to overturn, that the law of treason lives not in the experience of any of us. It is now nearly half a century since, in this country, there was occasion to bring any person to trial for such an offence. It is therefore necessary for me to state to you fully, and explain to you distinctly what the law is of which we charge the prisoner with having committed a breach, and then I shall lay before you, those facts which we mean to prove as breaches of that law.

In doing this I have already stated, I shall have occasion to request a considerable portion of your patience, because I possess none of those powers of oratory which could engage your attention for the length of time which it may be necessary to consume. If I did possess any such powers, gentlemen, I should abstain from the use of them upon the present occasion. It is not my duty; I am not sent here for that purpose; and I am sure I should ill execute the trust which is reposed in me, I should ill perform the duty which I owe to the sovereign whom I serve, if I endeavoured to excite your passions against the prisoner at the bar. It is my duty to give you a plain and dry statement of the law; it is my duty to give you a succinct narrative of the fact, accompanied with such observations as may be necessary to explain those facts and that law to you, and there my duty for the present ends.

You all know that the law of treason has been, since the beginning of this century, the same both in this country and in England. After the union of the two kingdoms, it was thought wise and expedient, that as we all owed the same duties to our sovereign, the measure and extent of those duties should be one and the same in all parts of the kingdom. As we serve one master, as we obey one sovereign, and are living under one legislature, it was thought proper, not only that we should have the same duties to perform, but that the same modes and means of trial and punishment for the breach of those duties should take place in both countries. Therefore I am under the nesessity of stating to you the law of treason, as it exists in the law of England, because the law of England has been the law of Scotland upon that subject for near a century past. And give me leave to remind you, that it was a wise and beneficent act to the subject which extended the English law of treason to this country. I need not tell the learned bench I address, I need hardly tell any man of common education who hears me, that the law of treason as it existed in Scotland, anterior to the happy period I am speaking of, was a law infinitely more severe, infinitely more oppressive and more hard upon the subject than the law that existed in England at the same period. We are therefore indebted to the wisdom, to the beneficence, and to the humanity of that legislature which extended to us the advantages already enjoyed by our fellow subjects in the other end of the island.

Gentlemen, the law of treason lies in a short compass; it has existed merely in its present form in England ever since the reign of Edward 3d, when it was reduced to a certainty, and stated in a short act of parliament, which has been little altered from that period to the present day. That act states three distinct species of treason, independent of that species of treason which has no connexion with the present case, namely, counterfeiting the coin. The first is compassing and imagining the death of the king. The second is levying war against the king. The third is adhering to the king's enemies: whoever shall be found guilty of any of these three species of offence is guilty of treason.

With the two last of these, it will not be necessary that I should trouble you at all. Levying war against the king is not the offence which the indictment charges against the prisoner at the bar, neither is the adhering to the enemies of the king the offence you are now to try.

The single species of treason charged against the prisoner at the bar, is compassing and imagining the death of the king.

Gentlemen, the charge I say, is compassing and imagining the death of the king. You cannot but take notice of the singularity of the phrase which constitutes the crime in this instance.

Compassing and imagining the death of the king,—that is, he who intends, he into whose imagination it enters, he who conceives the design of destroying the sovereign upon the throne is guilty of the crime. It is the intention and imagination of the person upon which the law affixes the guilt. And

therefore, it is that the law uses the phrase—compassing and imagining the death of the king.

Gentlemen, the law has been thus cautious and thus anxious to preserve the life of his majesty, because the law knows the danger to which we must all be exposed; the law knows the bloodshed and ruin into which this country must be involved, if such compassings and imaginations take effect, and therefore has gone beyond its usual limits in its care for the preservation of the person of his majesty, and has fixed the crime upon the intention, and not upon the act done.

But whilst it has been thus cautious and thus anxious to preserve the life of his majesty, whilst it has gone the length of fixing the crime upon the intention of the person, it has been equally anxious for the life of the subject? and though it says the intention of the subject is the crime it punishes, yet it does not rashly or lightly collect that intention; it does not gather the imagining the death of the king from loose or vague suspicion; for the statute of Edward 3rd says, "no man shall be found guilty of compassing or imagining the death of the king, unless he be proveably attaint by open deed, before men of his condition." Therefore it is necessary that I should explain to you what that open deed is, or what it is which is called in the language of the law, an overt act of high treason. Every indictment must contain in it the overt acts charged upon the prisoner, and the truth or the falsehood of those now stated you are to try.

Gentlemen, an overt act of high treason, is the means that are used for effectuating the purpose of the mind. If a person barely conceives the idea of compassing and imagining the king's death, that is not treason, but it becomes treason, and punishable as such the moment he employs any means, whatever they may be, to effectuate the purpose of his mind; what the law calls an overt act in its own language, is then in common language, no more than the means the person takes to effectuate the purpose of his heart. And the overt acts stated to you in this indictment, are the means which we charge this defendant has employed to carry his intention into practice. Gentlemen, you have heard the phrase compass and imagine the king's death. Now, you are not to suppose from this that it is necessary for me to state some direct or positive design to poison or assassinate the king, or to put an end to his life by any direct method. It is not necessary I should prove an attempt to assassinate or destroy him directly, because I have told you the crime is in the imagination of the person, and the overt act is the means used to carry it into effect. If he intended to do that which, in its natural consequence, endangers the life of the king; if he used means to accomplish a purpose which placed his majesty in a situation of peril, and those means be stated in the indictment, he must be found guilty; for men shall not be allowed to attempt to place the sovereign in such situations, and then say they did not compass the death of the king, because they did not intend the natural and necessary consequences resulting from their acts.

Therefore, if I produce evidence to satisfy you of such intention in the prisoner at the bar, and if I have charged in the indictment, and prove in fact what amounts in point of law, to means used to effectuate that intention and that purpose, it will be your duty to find him guilty.

These are not my ideas, these are not my words, these are not my explanations of the law; for standing in the situation in which I stand, in the peculiar circumstances in which I am now addressing a jury of my countrymen, I should feel myself highly criminal indeed, gentlemen, if I stretched the law one word beyond its fair bearing. I wish you to take no construction of mine into your consideration. I will prove what I have said to be the law by the opinions and writings of able and skilful men, at all periods of our constitution, and by the words of learned and wise judges at different times upon different trials.

Gentlemen, Mr. Justice Foster, one of the best writers upon the criminal law of England, and a man not more famous for correctness and elegance of writing, than for the love of liberty and the constitution of his country says, "The care the law hath taken for the personal safety of the king is not confined to actions or attempts of the more flagitious kind to assassination or poison, or other attempts directly and immediately aiming at his life; it is extended to every thing wilfully and deliberately done or attempted, whereby his life may be endangered." He goes on to say, "and therefore the entering into measures for deposing the king, or imprisoning him, or to get his person into the power of the conspirators; these offences are overt acts of treason within the branch of the statute; for experience hath shown, that between the prisons and the graves of princes the distance is very small." But, gentlemen, he does not even stop here, for he goes on to tell you, "That offences which are not so personal to the king as those already mentioned, have been with great propriety brought within the same rule, as having a tendency, though not so immediately, to the same fatal end." He puts this case, which in my opinion, illustrates the law better than any case I can state to you. The case he puts is this; "A person entering into measures in concert with foreigners or others, in order to an invasion of the kingdom, or going into a foreign country, or even proposing to go thither to that end, and taking any steps in order thereto; these offences are overt acts of compassing the king's death." You will observe, gentlemen, if the person abroad happened to be a person who

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is at amity with the Crown of England, the end it meant could not be for adhering to the enemies of the king, because in truth the persons adhered to were not enemies of the king; but, says Mr. Justice Foster, "Men who do such acts ought to be, and may be, and many persons, upon such a case, have been indicted and found guilty of compassing and imagining the death of the king. Why?—because those acts have a manifest tendency to endanger the person of the king, and therefore upon the clearest principles of substantial and political justice are brought within that species of treason of compassing the king's death, "ne quid detrimenti respublica capiat."

These are the words of this learned judge. And upon his authority I state, that if I should lay before you any thing that has a manifest tendency to endanger the person of the sovereign, it will be your duty to find the prisoner guilty of this species of treason. This is not the language of Mr. Justice Foster only; and, gentlemen, you will excuse me for being a little tedious upon the present occasion, because I am anxious every thing should be fully and perfectly understood. I am anxious to bottom myself upon the authority of great and approved writers; if it be thought that I am going too much over the same ground, the novelty and singularity of this case will, I hope, be an apology with you and the Court. This is not only the language of Foster in George the 2d's time, but the language of lord chief justice Hale himself, the greatest and best judge that ever sat in England, in Charles 2d's time; he tells you "Though the conspiracy be not immediately and directly, and expressly the death of the king, but the conspiracy is of something that, in all probability, must induce it, and the overt act is of such a thing that must induce it; this is an overt act to prove the compassing of the king's death," which is high treason, in his language. Therefore, if I prove a conspiracy by the prisoner at the bar, that in all probability, might induce the death of the king, that is high treason in the language of this great master of the law. In another part of his book he tells us, "An assembly to levy war against the king, either to depose, or restrain, or enforce him to any act, or to come to his presence, to remove his counsellors or ministers, or to fight against the king's lieutenant or military commissionate officers, is an overt act proving the compassing the death of the king; for such a war is directly against the very person of the king, and he that designs to fight against the king, cannot but know at least it must hazard his life."

Gentlemen, the same is the language of all the writers of all periods of time; it is the language of serjeant Hawkins in his correct treatise of the Crown Law of England. "Such compassing the king's death may be manifested, not only by overt acts of a direct conspiracy to take away his life, but also by such as show such design as cannot be executed without the apparent peril thereof." What I have to conclude with is, if, in the language of Foster, I state any thing deliberately done, whereby the person of the king may be in danger,—if I state any facts of manifest tendency to endanger the royal life—if, in the language of Hale, I state any thing that in all probability must induce the death of the king—if, in the language of Hawkins, I show any design that cannot be accomplished without apparent peril of the life of his majesty, then, if I prove the facts against the prisoner at the bar, it will be your duty to find him guilty.

Gentlemen, in trials of this sort, persons standing in the situation of the prisoner, have often set forward a species of defence arising from a supposed construction of the law, upon which it is necessary I should say a few words It has often been said, upon trials of this sort, that a conspiracy to levy war (I wish the jury would mark my words), a conspiracy to levy war, is not high treason. Now, gentlemen, most unquestionably, in some sense, that proposition is correctly true. If the prisoner was indicted for levying war against the king, most unquestionably he could not be found guilty of high treason, unless war was actually levied. Under such an indictment, for the species of treason for levying war against the king, a conspiracy to levy war would not be either an overt act in itself, nor would it be admissible in evidence, because the crime charged upon the prisoner is levying war against the king; and before he can be found guilty of that crime, war must be actually levied. The prisoner here is not indicted for levying war against the king, but for compassing and imagining the death of the king, which is the first species of treason; and under a variety of circumstances, a conspiracy to levy war may or may not be an overt act of compassing or imagining the death of the king. I have stated to you, that an overt act is the means used to effectuate the purpose of the mind. I have stated to you, that any means used to an end which has an apparent tendency to put the king's life in danger is an overt act of high treason; and a conspiracy to levy war in many instances, and under many circumstances, may show a design which has an apparent tendency to put the king's life in danger, or which cannot be executed without putting his person in peril—If it be a conspiracy to levy war against the constitution of the kingdom, of which he is an integral part, if it be a conspiracy against the three branches of the legislature, how can that be a design which can be executed without apparent peril of his majesty's life? I state this to you, because I know this is a point which has been started in different trials, in former periods of our history, and some quotations from books have been found to countenance the opinion, that a conspiracy to levy war is not treason. But I take the law to be, that it is an overt act of high trea-

son whenever the design is such as cannot be executed without apparent peril of his majesty's life. Gentlemen, not to walk without authority, and being anxious to state nothing but what I can prove by great authority, I will take the liberty to state, that this is no new idea raised up to meet the case of the prisoner at the bar, but is as old as the constitution itself.

Gentlemen very early in the reign of queen Elizabeth, the principle was laid down, and from that period it has been followed up ever since. In the 13th of Elizabeth all the judges were consulted upon a case similar to the one I have stated to you from Mr. Justice Foster; a subject of this realm being beyond sea, practised with the prince of a foreign country to invade this realm, with a great power, and his practising declared by what means, and how and in what place the invasion should be, and if such an invasion should be, there were many subjects there who would assist and adhere to him, but there was no such invasion afterwards. The judges were of opinion that these offences were treason; for an invasion with foreign powers cannot be but of necessity it will tend to the destruction or great peril of the prince. I give you the words of the report, and the principle which I take to be laid down is, that every thing which of necessity tends to the destruction or the great peril of the person of the prince is, if an overt act be laid and proved, high treason; whether a conspiracy to levy war, necessarily tends, if carried into effect, to the great peril of the prince, will be according to the circumstances of that conspiracy; but if the conspiracy be such as is directly against the person of the prince, or be such as is directly against the government, of which he is a part, and which it is his duty to defend, it can hardly be contended that it is not such a design as puts the person of the king in great peril, and it is, if proved by an overt act, high treason. The same thing is said by lord chief justice Hale; I will use the freedom of reading his words:—"That yet such a conspiracy, or compassing to levy war against the king directly, or against his forces, and meeting and consulting for the effecting of it, whether the number of the conspirators be more or less, or disguised under any pretence whatsoever, as of reformation of abuses, casting down inclosures, particular or generally—Nay, of wrestling, foot-ball playing, cock fighting—Yet if it can appear that they consulted or resolved to raise a power immediately against the king, or the liberty or the safety of his person, this congregating of the people for this intent, though no war be actually levied, is an overt act to maintain an indictment for compassing the king's death within the first clause of the statute of the 25th of Edward 3d, for it is a kind of natural or necessary consequence that the attempts to subdue and conquer the king, cannot intend less than the taking away his life." At other times, and by other judges the same thing has been said. Hawkins says, "That the levying war against the king's person," (I rather choose to give them in other men's words than my own, which are more accurate than any I can use); Hawkins says, "That the levying war against the king's person, or the bare consulting to levy such war, or meeting together and consulting the means to destroy the king and his government, or assembling with others and procuring them to attempt the king's death, or listing men in order to depose the king, or printing treasonable positions, as that the king is accountable to the people, and that they ought to take the government into their own hands, &c. or publishing a book to prove that the king's government is anti-christian and heretical, &c. may be alleged as overt acts to prove the compassing the king's death." If I should prove consulting, agreeing to levy war, and show means used to destroy the government, of which the king is a part—if I show means used directly to destroy the constitution of the country—I have laid before you a case of high treason; because, whether it be called a conspiracy to levy war or not, I shall have laid before you the means used by the prisoner at the bar, to effectuate his end, which end is such a design as in its apparent and natural tendency must endanger the life of the king, and cannot be executed without apparent peril to the person of his majesty. Therefore, if you should, in the progress of this case, hear any thing concerning a conspiracy to levy war, not being high treason, you will understand it under the restrictions, and in the manner in which I have stated it; if that conspiracy be of levying a war, which if levied, has a direct tendency to destroy the life of his majesty, there is no doubt such a conspiracy is an overt act of high treason, a proposition supported by every authority from the reign of Elizabeth to this hour in which I am speaking.

I wish, before I conclude this point, to state to you the law upon the subject of conspiracies to levy war, from the very highest authority; because it is the only point, upon which I conceive any controversy can arise; therefore, I wish to state it not only from the dicta of writers of high authority, but to state it from the language of judges of the first eminence. Probably you have all heard of the fame of lord chief justice Holt, whose ability and integrity, at a period of life earlier, perhaps, than any one that ever filled that high situation, raised him in the glorious reign of king William, to the office of chief justice of the King's-bench, which he filled with ability and integrity, that may have been equalled but never surpassed, by any one that has sat there since. In the case of some persons who were tried for being concerned, more or less in a plot for assassinating king William, this defence was set forward, and it was argued before him, that a conspiracy to levy war is not an overt act of high treason: he says

you, when they come to deliver their charge, in what I have done so.

Having said so much upon the law of the case, it is now incumbent upon me, to state to you the fact which I mean to bring within the law, only premising, that consulting and agreeing to such a conspiracy and plan as I have stated, is an overt act of high treason, because such consultation and agreement are means taken by the prisoner at the bar, if proved against him, to effectuate the intentions of his mind; therefore, if I should lay before you, proof of such conspiracy, or if I should lay before you proof of the prisoner at the bar's agreement to such a conspiracy, or his consulting for the purpose of executing such a conspiracy as leads to a design to put the person of the king in apparent danger, these are overt acts of high treason in point of law; whether I shall prove them in point of fact, is for you to determine; I shall endeavour to state the facts to you as shortly as in my power.

Gentlemen, the facts which I have to lay before you, are not of a small conspiracy of a few obscure individuals, in an obscure corner of this metropolis, it is a conspiracy that has arisen, indeed, from a small beginning, which at first put on the appearance of a desire to pursue legal objects, which has been carried on, by connexion and conjunction with the seditious persons in this and other parts of the country, which has been fostered by means of clubs, which has been raised by means of committees, which has been carried on by the means of the circulation of various seditious papers, industriously spread through the country, by seditious and treasonable societies, both here and elsewhere, and which at last, from small beginnings, has grown into a design to overset the constitution of the country, and which, but for the vigilant interference of the magistrates appointed by the constitution of the country to guard the public peace, was nearly being carried into execution, and might, in its direct consequences, and immediate tendency, have deluged this kingdom, from the one end to the other, with blood. Such is the conspiracy I mean to charge upon the prisoner at the bar;—sorry I am to be obliged to state and prove it, but such is the nature of the crime I mean to prove; and in doing this, I shall first state to you the plan and conspiracy itself, and then lay before you, the part which the prisoner acted in it, when and how far he acceeded to it, and the means he used to render it successful, and carry it into execution.

You must know there have been for some time past, in this country, meetings calling themselves by various names, and assuming various forms, but in general, calling themselves, or miscalling themselves, by the name of—the Friends of the People.

You are not ignorant, that their first object, their first pretended object at least was, to petition parliament to obtain what they call a reform in the representation of the people.—You are not ignorant, gentlemen, that these petitions, whether they were presented really to obtain a reform, or whether they were presented for the purpose of being rejected, I do not know, but you are not ignorant that these petitions did not procure that redress which the petitioners desired.—Soon after, early in the year 1793, a new scheme, and a new plan took place.—The first piece of evidence which I shall lay before you, is the beginning and commencement of that plan, in order to show you where it began, and how it grew to the magnitude to which it afterwards attained.—The first dawnings of the plan I have to lay before you, will be found in a letter which was sent to this country, by a person of the name of Hardy,* who was secretary to a seditious society in London, of great magnitude.—Hardy wrote to a person every body knows in this country, one Skirving,† informing him,—"Our petitions, you will have learned, have been all of them unsuccessful; our attention must therefore be turned to some more effectual means; from your society we would willingly learn them, and you, on your part, may depend upon our adopting the firmest measures, provided they are constitutional."—To this letter Mr. Skirving returns an answer, and points out what he thought were more effectual means.

Mr. *Hamilton*.—My Lord President, as the counsel has said nothing yet upon these letters, your lordship will decide whether it is fit to read letters of any kind if they are not to be used as evidence.

Mr. *Anstruther*.—They are to be read as evidence. I do not mean to state to you the contents of a single paper which I do not mean to use in evidence.

Mr. *Hamilton*.—I submit to your lordship if it be proper to read those letters.

Lord President to the Jury.—Gentlemen, you will not pay any attention to letters, unless they be afterwards regularly proved before you.

Mr. *Fletcher*.—In this part of the business, the jury should abstain from taking notes of any thing that passes.

Mr. *Anstruther*.—At present it is my duty to state the evidence I mean to lay before you. I shall state the contents of no letter, and the words of no paper which I do not mean to prove; but as the letters and papers make a part of my story, and I cannot state the case without I state the contents of the letters, I rather choose to do it from the words of the letters themselves, than state the purport from any recollection of mine.

Gentlemen, I have told you the first letter written upon this subject, was a letter which talked of more effectual means. In answer to that letter, the person to whom it was ad-

* See his trial for high treason, Vol. 24 of this Collection.

† See his trial for sedition, p. 391, of this volume.

dressed, whose character and situation I will prove to you, and whose hand-writing I will also prove, returned an answer to his correspondent in London, in which he perfectly agrees with him, that more effectual means of reform were now to be turned to. He then goes on to state, that the meetings in England are what he calls an aristocracy for the good of the people; but the meetings in Scotland are the people themselves. He then states, that he foresaw the downfall of the whole of this government, and that they in this country had at once perfected the plan of their organization; and the reason of perfecting the plan of their organization was, that when that time came they might be ready to act with unanimity, and not be occupied about organization, without which however anarchy must ensue. The letter will be laid before you, and in that letter you will see the first dawnings of a meeting which calls itself a convention. It was no wonder, gentlemen, that they turned their eyes to this instrument, as more effectual than petitioning; they had seen the powerful effect of a convention in other countries, and they therefore turned their eyes to it as a more effectual means of a reform; and I grant it would be more effectual in carrying on this plan than any petition whatever. You will see throughout the whole of this letter I have to lay before you, the first project of a convention; you will see that a meeting was not intended for the purposes of reform, by petition to parliament, or by legal means; when the government of this country was to be dissolved and be at an end, an event they looked to not only as certain, but desirable, then the gentlemen were to be ready with their plan of organization; then they were to act as a convention assembled from, and representing, all parts of the kingdom. These papers, I say, contain the first project of calling a convention of the people of this country; the only observation I shall make on them is this, that you will see from them it was not the intention of the persons calling themselves a convention, it was not the intention of these persons to proceed by petition to parliament, but their intent was, to proceed by their own force and authority, and not by the means of the legal organs of this constitution; to proceed by their own will, and not by that of the legal government of the country, to supersede the legislature in all its functions, and to have recourse to means of reform, to use their own words, more effectual than petitioning. If their design was, to proceed by their own authority, and that design is proved to you,—if their design was to take into their hands the government of the country, or to supersede for ever, or a time, the existing government of the country; these are designs which could not be effected without apparent danger of the king's life, and I have no scruple to say are high treason: whether such a design be proved in the sequel of this trial, will be a matter for you to consider.

Gentlemen, soon after this plan was formed, a body, unknown to this constitution, met in Edinburgh, calling itself a British convention;* at first it did not assume that name, but it met towards the latter end of last year, composed of persons deputed from different parts of this kingdom, of different societies in England and Scotland; its views and objects, its plans and intentions, you will have to judge of. If, upon the whole matter, you shall be of opinion its views were legal, if the means intended for the execution of those views were peaceable and constitutional, then there is no harm in that society; but, if you should be of opinion, upon the whole matter, that its views were unconstitutional and illegal, that the means by which they intended to carry those objects and views into execution, were to supersede the legislature of which his majesty is a part, to carry on its plans by its own force, power, and authority; it is nothing more nor less but an intention to supersede the legislation, to take into its hands the power of government, and, at least for a time, to depose and put aside his majesty from the legal authority vested in him by the constitution: whether that was the purpose of the convention or not, will be for you to judge. I shall point out some of its acts.

Gentlemen, when this meeting was formed, I have said it was attended by persons from various parts of this kingdom, some from England and some from Scotland; and I must call your attention to a part of the instructions from the London Corresponding Society, to which Hardy, the writer of the first letter I have mentioned, to Margarot and Gerrald,† their delegates, was secretary, dated the 24th of October, 1793. These instructions will be proved; they contain a direction to those delegates to resist the authority of the legislature, in case the legislature should do a particular act. Sect. 7, of these instructions, states, "That it is the duty of the people to resist any act of parliament repugnant to the original principles of the constitution, as would be every attempt to prohibit associations for the purpose of reform." Is this any thing more or less than a resolution to resist the legislature of this country in the exercise of its authority, a conspiracy to intimidate the legislature from acting fairly in the execution of its duties, and a determination to set at defiance king, lords, and commons, and the law itself, and to resist their authority, if they did not act, as this self-created convention might think, constitutionally. With these instructions their delegates came down to this country:

* See the trials of Skirving and his associates in this Volume.

† See their trials, pp. 603 and 803 of this Volume.

when they arrived, this convention formed itself upon the model of another convention in another country, and took the name of the British Convention, and formed itself into departments; it used all the cant phrases and forms used in France, had its sections, its departments, granted honors of the sitting; had its primary assemblies and provincial departments, and absurdly dated its minutes, First year of the British Convention one and indivisible. I know you may be told, because juries have been told, there is no harm in using French phrases, there is no harm in using cant names. Taking that as an abstract proposition, it is unquestionably true; but you who are set there to judge of the views, intentions, and plans of men; you can judge of the intentions of men by no other means than by the acts of men; therefore if you see men adopting the acts, following the plans and schemes, and taking the names and forms of particular societies of a particular description, I do not think you will have much difficulty in drawing the inference, what the views and objects of these men are. It is not from names and forms alone you will collect the views and intentions of this assembly; you will find these men, after they took the name of the British Convention, discussing and settling the plan for the meeting of future conventions in other circumstances and places, as if a convention was to be a permanent body in the legislature of this country; in the early part of it, before it had assumed that name, motions were made, some for the purpose of petitioning parliament for a reform; and what I would call your attention to is this, that from the moment it assumed the name of the British Convention, all idea of petitioning parliament for a reform was abandoned; whenever proposed, the order of the day followed; whenever hinted at, it was negatived. After this convention had proceeded some steps farther, after it had assumed the form which I have described, after it had done the acts which shall be given in evidence to you, and from which you will be able to judge of their intentions and views, some resolutions were proposed and adopted with a singular and extraordinary degree of solemnity, too bold even for the convention itself to venture to place them upon their minutes. Whether this resolution amounts to proof of a conspiracy to resist the legislature of this kingdom, and to resist and oppose the laws of this country, will be for you to judge; to me it seems decisive evidence of a design not to rest satisfied with the wholesome laws of their ancestors, not to petition the houses of parliament, or apply for redress by legal and constitutional means, but a settled conspiracy to oppose every act of parliament that should militate against what they should please to call the constitution of these kingdoms, and not only to proceed in their conspiracy, until compelled to desist by superior force, but to provide a means of resistance and a mode of rebellion, in case the exertions of legal authority and the constitutional powers of the executive magistrate should disperse and scatter them. Some of the resolutions I allude to, I will read to you.

"Resolved, that the following declaration and resolutions be inserted at the end of our minutes, viz.

"That this convention considering the calamitous consequences of any act of the legislature which may tend to deprive the whole or any part of the people of their undoubted right to meet, either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of the society, and also subversive of our known and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country, and shall continue to assemble and consider of the best means by which we can accomplish a real representation of the people and annual election, until compelled to desist by superior force.

"And, we do resolve, that the first notice given for the introduction of a convention bill, or any bill of a similar tendency to that passed in Ireland, in the last session of their parliament;

"Or any bill for the suspension of the Habeas Corpus act, or the act for preventing wrongous imprisonment, and against undue delays in trial in North Britain;

"Or, in case of an invasion, or the admission of any foreign troops whatsoever into Great Britain or Ireland;

"All, or any one of these calamitous circumstances shall be a signal to the several delegates to repair to such place as the secret committee of this convention shall appoint; and the first seven members shall have power to declare the sittings permanent; shall constitute a convention, and twenty-one proceed to business."

These resolutions are of such a nature, that hardly a man who hears me, can doubt that they disclose a conspiracy to disobey the legislature in the execution of its duty, a conspiracy to be carried on and supported by force; they say, they will resist until compelled to separate by superior force; force superior to what? force superior to that force which they had to bring against it;—how is it possible to construe these words, without being of opinion that they point directly to supporting their designs by arms, and that they were determined to meet in spite of the law of the country, till the fate of battle should decide who was to have the rule of this nation—Now, let me ask whether this be any thing short of a conspiracy against the constitution

of this kingdom, and whether it be not a design which could not possibly be carried into effect, without apparent peril to the life of his majesty? If it was successful for an instant, he was in fact deposed from his throne, his authority as king gone, and the constitution he has sworn to defend, and which it is his duty, as I am sure it is his wish to support, at the hazard of his life itself, absolutely annihilated. But it does not stop here, there is a farther part of the conspiracy, to which I must call your attention. "This convention doth therefore resolve, that every delegate, upon return home, do convene his constituents, and explain to them the necessity of electing a delegate or delegates, and of establishing a fund without delay, against either of these emergencies, for his or their expenses, and that they do instruct such delegates to hold themselves in readiness, at one hour's warning." It is necessary to call your attention to this, not only because you will find the prisoner at the bar, adopting this resolution, acceding to it, and acting under it, taking means to elect that delegate, taking means to prepare that fund to provide against the emergency stated in this paper; but, because it clearly points out the means that were to be used to render this conspiracy successful, funds were to be provided, leaders were to be elected, who were to be ready at one hour's warning, to step forward whenever the event happened, which was to rouse them into rebellion against the law, the constitution, and the king. To every part of this resolution, I will show the prisoner at the bar's complete accession, and I shall lay before you, all the means he took to carry it into effect; and what I have to charge upon him here is, a conspiracy to resist the legislature of this kingdom by force, and taking measures and providing means for carrying that conspiracy into execution. You are not ignorant that this meeting or convention was put an end to, and dispersed by the boldness and activity of the person who then held the situation of the first magistrate of this city, a person I am sure I need not name to you, one with whose merit you are well acquainted, and to whose conduct, on that occasion, his country is as much obliged, as perhaps it ever was to any person that ever filled that high station, I mean Provost Elder. I may be told, perhaps, what have I to do with this convention at present, or what had the prisoner at the bar to do with it? It was dispersed and at an end; but I shall show you, that that convention, although dispersed, was still alive: the resolution I have read, and another which immediately followed, and which was unanimously agreed to, is, that the moment of any illegal dispersion of the British Convention, should be considered as a summons to the delegates to repair to the place of meeting, appointed for the convention of emergency by the secret committee. These two resolutions provided against the event which took place, they kept alive the conspiracy in another form, and furnished the means of future rebellion. I shall prove to you, that the prisoner at the bar adopted those resolutions, followed out those plans, took means to collect that fund, and elect those delegates who were to set the legislature at defiance, and provided and collected arms to render their plans successful, and their resistance effectual.—The British Convention being dispersed, a plan resulting from those resolutions, and grounded on the dispersion of the British Convention, took place in England, of calling a convention there; the nature of that convention I shall lay before you, and it is necessary I should, because it will explain to you the nature of that convention, to which the prisoner at the bar was to send a delegate, for the support of whom he was to provide a fund, and for the maintenance of which, he was to send money and collect arms. You will see, that although a similar plan had been in contemplation in England, although the societies there intended a convention to be called, yet the immediate cause of that measure, the peculiar reason which made it in their idea more immediately necessary arose from the dispersion of the British Convention, and that the resolution I have just read to you was acted upon, and the conspiracy I have stated kept alive and proceeded on with vigor in both parts of the United Kingdom. The first considerable meeting, after the period I am talking of, for the purpose of calling this new convention in England, was held at a place called the Globe Tavern in London. There the London Corresponding Society, one of those factious societies which had sent delegates to the British Convention, met and came to certain resolutions for the purpose of calling another convention; these shall be laid before you. I have only to state at present, that the leading feature of them was a resolution to call a general convention, to take the government of this country into their own hands, to form a government of their own, independent of King, Lords, and Commons, and to frame their own laws and constitution. They say they must have a convention of the people, and why? because they will have redress from their own laws, and not from the laws of their plunderers, enemies, and oppressors. From the papers which will be laid before you, you will have no difficulty to discover who they mean by their plunderers, enemies, and oppressors; they mean neither more nor less than the King, Lords, and Commons of this kingdom; and if this be their meaning, you cannot doubt, that if they were to form their own laws, it was not by the authority of the legislature of this country, but by their own power and authority. They were to procure their own laws, not by the medium of King, Lords, and Commons, but by forming laws themselves. The convention, therefore, which they proposed to call, was meant

to supersede the legislative authority in the exercise of all its functions.

When you come to read these resolutions, flowing from the very society which sent delegates to Edinburgh, signed by the very person who signed the instructions to those delegates, it will be impossible for you not to remark the singular and exact coincidence between these resolutions, and those of the British Convention I have read to you. The Convention is, (say they) rendered necessary, by the dispersion of that in Edinburgh. It is to meet on the same events, it is to resist the government on the same pretences, to assume the same powers, and to be composed in the same manner as the Convention proposed by the resolution I have read to you, and to such a convention was the prisoner at the bar to send a delegate, for the support of such a body was he to provide a fund, and while the London Corresponding Society, and other bodies connected with the British Convention were playing their parts in the other end of the island, the prisoner and his associates were not behind hand with them in this.

The next important step in London, was, at a place called Chalk Farm, where the same society met, and came to some resolutions, not very different from those of the British convention, and as directly contradicting the authority of King, Lords, and Commons, in all their branches; and they there too declared that certain laws they will not abide by, they will not submit to, whether they have or have not the consent of parliament.

Now, gentlemen, I have stated to you a conspiracy, which has existed in this country, the tendency and object of which was, to supersede the authority of the legislature, and to resist its decrees by force, after the dispersion of that meeting, by the spirit and exertion of the first magistrate of this city. I have stated to you the means that were taken, by those who had been sent delegates to that convention, as it called itself, to call another convention, to meet at another place; the nature of that convention, when called, what it was meant to be by those who meant to form it; what its nature and purposes were, you will learn, from the incontrovertible evidence of their own resolutions, from which you cannot fail to see, that their object was to form laws for themselves, to support themselves by their own authority, to resist and repel, to supersede and destroy the authority of the legislature of this kingdom; as the resolutions at the Globe Tavern, the resolutions at Chalk Farm in the neighbourhood of London, where they expressly resolved to resist certain laws, whether those laws took place with or without the consent of parliament, distinctly mark out what it is they meant to destroy, and they meant to supersede; they meant to supersede what they call the hereditary senators of this kingdom, they meant to supersede what they call the packed majorities of pretended representatives of the people, they meant to supersede the legislative authority, and to raise themselves up, as the governing power of this country in its stead, to enact such laws as they thought proper, to disobey such as they disliked, without the least hint that they meant to leave the least trace of the constitution, under which you now live, standing. If you shall be of opinion that this is the fair result of the papers I shall lay before you, if you shall be of opinion they meant to supersede the authority of the legislature, and the authority of King, Lords, and Commons, you cannot doubt that this is such a design, which, if carried into execution, has a manifest tendency to put his majesty's life in danger, in truth it is nothing short of deposing the King from the throne, and putting an end to the authority of the government under which we live.

Such were the proceedings (which I do not state more at length, because they will be read to you) of those societies in London, which met for the purpose of calling a convention.

While these proceedings were carrying on, and these resolutions adopted, letters, signed by the name of Hardy, were written, and dispersed all over this country, to incite the people to call another British Convention; I mark these words—calling together another British Convention—because, if I can show the prisoner acting upon this letter, or upon the resolution of the British Convention which has been read to you, of the nature of the convention he meant to call, you cannot doubt it was to be another British Convention of the same nature, and tendency, and with the same views and objects as the first.—The letter speaks for itself; its meaning no man can mistake; I will read it to you without a comment:—

"Citizens; The critical moment is arrived, and Britons must either assert, with zeal and firmness, their claims to liberty, or yield without resistance to the chains that ministerial usurpation is forging for them. Will you cooperate with us in the only peaceable measure that now presents itself with any prospect of success? We need not intimate to you, that notwithstanding the unparalleled audacity of a corrupt and over-bearing faction, which at present tramples on the rights and liberties of the people, our meetings cannot, in England, be interrupted without the previous adoption of a convention bill, a measure it is our duty to anticipate, that the ties of union may be more firmly drawn, and the sentiments and views of the different societies throughout the nation be compared, while it is yet in our power, so as to guide and direct the future operations of the Friends of Freedom.—Rouse then, to one exertion more, and let us show our consciousness of this important truth.—If we are to be beaten down with threats, prosecutions, and illegal sentences, we are un-

worthy, we are incapable of liberty. We must, however, be expeditious; Hessians and Austrians are already among us; and, if we tamely submit, a cloud of these armed barbarians may shortly be poured in upon us. Let us form, then, another British Convention; we have a central situation in our view, which we believe would be most convenient for the whole island; but which we forbear to mention (entreating your confidence in this particular), till we have the answer of the societies with which we are in correspondence. Let us have your answer, then, by the 20th at farthest, earlier if possible, whether you approve of the measure, and how many delegates you can send, with the number also, if possible, of your societies. We remain yours, in Civic affection,

"THE LONDON CORRESPONDING SOCIETY,
"T. HARDY, *Secretary*."

"For the management of this business, we have appointed a secret committee; you will judge how far it is necessary for you to do the same."

I may here be told, what is all this to the prisoner at the bar? and if I were to stop here, I should be told truly; but it is necessary I should show to you, first, the existence of a conspiracy, the existence of a plan to supersede the legislative power; and then, to show you the part the prisoner played in the execution of it: and gentlemen, perhaps you may be surprised to hear that the prisoner at the bar had any share in such a conspiracy, but you will not be more surprised than I was when I heard that he was at all concerned in carrying on a plan of this nature. For it is no less strange than true, that hardly so much as two years ago, the prisoner at the bar pretended to be a friend to the existing government of this country, and to be particularly interested in the safety and welfare of a person in a very eminent situation in this kingdom, known to you all. He pretended to have a particular regard, not only for the constitution of his country, but to the person, and to the character of the respectable and illustrious person who fills the office of one of his majesty's secretaries of state;* he pretended, I say, to be particularly interested in his welfare and did certainly, about two years ago, write to him certain letters, offering to give him information, respecting the proceedings of societies, who then called themselves by the name of the Friends of the People.

Gentlemen, it is unquestionably true that, that illustrious person (as it was his duty to do in his situation) did return an answer to the letter written to him by the prisoner at the bar; that letter will be read to you; it is such a letter as it was his duty to write, and it is such a letter as, being his duty to write, I am sure he would write; because in every situation which he holds I am sure he will do his duty to his sovereign and to the public.

The answer from the secretary of state informed him that he should be happy to have any information he thought it fit government should know, leaving it to him to give what information he thought proper. After this period, the prisoner at the bar had some correspondence with my learned friend who sits next me, and some information he did give him respecting the proceedings of a society which calls itself the Friends of the People, and some information he did give personally to Mr. Dundas himself. What that was, as the prisoner has thought fit to subpœna my learned friend near me, when he is examined he will state; and the whole correspondence that took place between them, its nature, contents, and limits, though he might shelter himself under his situation, and might demur till he knew the questions that might be asked him, he will state and lay before you. I have his authority for saying there is no question he will not readily answer that can be asked, or any correspondence which took place he will not lay before you, if he has it, if not, he will state to you its contents to the best of his recollection and belief.

Whether the prisoner conveyed true or false intelligence to my learned friend is not for me to determine; if he is examined he will state what that information was. That correspondence, such as it was, continued till some time about the middle of the year 1793. Anterior to the meeting of the British Convention, anterior to the treasonable conspiracy which I have stated to exist in this country, anterior to those resolutions to resist the legislature and all legal authority, all correspondence had ceased between the prisoner at the bar and my learned friend. Why that correspondence ceased is not for me to say. I do not choose to state to you either the applications which were made by the prisoner at the bar to my learned friend, or the consequences and event of those applications. Whatever they were, if the prisoner at the bar wishes them to be laid before you, my learned friend will state them to you fairly and fully. I say nothing more than this, that from the month of September last, or thereabouts, all communication, all correspondence of any kind ceased between the prisoner at the bar and my learned friend or the other officers of government.

Now, gentlemen, it is my duty, and very short I shall be in stating to you the conduct of the prisoner at the bar, prior to the ceasing of the correspondence I have mentioned. I do not know that Mr. Watt was a member of the meeting called the Friends of the People, and unless I can connect him with the acts of the British Convention, unless I can show you his intention of calling another convention, and the means he took to elect delegates and provide funds for their support, and connect him with the conspiracy formed in this

* Mr. Dundas. See his trial A. D. 1806, *post*.

country against the existing government of the state, I cannot call upon you for a verdict upon the first part of this indictment. But you know, and my lords will tell you, it is not necessary for me to prove every overt act laid in the indictment; if I prove only one of the overt acts laid in the indictment, if that be an overt act sufficient in law, it is your duty to find him guilty. For this I shall, before I proceed farther, give you a direct and short authority. Mr. Justice Foster says, "if divers overt acts are laid, and but one proved, it will be sufficient, and there must be a verdict for the crown; and therefore though divers overt acts are laid and the indictment is faulty as to some of them, it shall not be quashed, because that would deprive the crown of the opportunity of proving other overt acts that are well laid." If I prove that the prisoner took certain means which in law are full evidence of his traitorous intentions and compassings, and which are laid in the indictments overt acts of high treason, it is of no importance whether I fail in the proof of others or not; because I have then proved enough to support the verdict of guilty—if I do not couple the prisoner at the bar with a conspiracy in this country, and if I do not couple the prisoner with a conspiracy in another country, it is your duty to find him not guilty, unless I prove against him other overt acts of high treason laid in this indictment. I trust however I shall have no difficulty in proving him guilty of every part of it, as well as acting his part in the conspiracy to supersede and overturn the constitution of the kingdom by means of a convention as in the more direct but not less flagrant and wicked plans and schemes set forth in the latter part of the indictment you are now to try.

As soon as the activity of the magistrates and the force of the law had dispersed the British Convention, that body ceased to exist in the form of a convention, but did not cease to exist in fact; for very soon after its dispersion, the societies which had sent members to the convention, and many of the members of the convention itself, formed themselves into another body for the purpose, as I shall prove to you, of carrying into effect various objects of the British Convention, of keeping its spirit alive, and of calling another convention similar to that which was just dispersed, the views and objects of which I have described to you; what name they took immediately after the destruction of this British Convention I cannot exactly tell, but I believe they called themselves the Committee of Correspondence, or a General Committee; but whatever might be the name of that committee, the prisoner at the bar was a member of it; the nature of it will be proved to you by the witnesses. I state to you its objects to be to carry into effect the views and projects of the British Convention, to elect a delegate or delegates to send to another convention that was to be called in England, and to provide a fund for defraying the expenses of those delegates. And now you will see the purpose for which I called your attention some time ago to the famous resolution of the British Convention. It was resolved that every delegate should, on his return home, take measures for procuring another delegate to be elected to represent their society in the ensuing convention, and to provide a fund for the expenses of such delegate. Such was the object of the British Convention, and such the object of the committee. I state therefore that the General Committee or Committee of Correspondence, did meet in consequence of and for the purpose of carrying into effect the resolution of the British Convention. Mr. Watt was a member of this Committee of Correspondence; he became a member of that committee for the purpose of carrying into effect the resolution I have so often mentioned, acceding thereby to the whole contents of that resolution, and acceding to, and acting in, the conspiracy to resist the legislature of the country, to repel the law, to resist by force, and to elect another convention to be called a British Convention to meet in England, with the views, under the circumstances, with the powers and for the purposes I have mentioned already. If I prove that committee existing, and Watt acting in it, if I prove the British Convention destroyed in one shape and raised up in another, if I prove Watt acting upon these views, I prove him acting and acceding to the whole of what I stated. If that conspiracy be a traitorous conspiracy, and if the object of it was, to supersede the legislature of the country, I have proved enough to implicate him in all the consequences of these acts, however fatal they may be. Soon after the Committee of Correspondence met, Mr. Watt himself moved for the formation of a Committee of Union, the object of which was for the purpose of collecting the sense of the Friends of the People throughout Edinburgh, to further the views of the British Convention, to further the schemes planned by them, and above all, for the purpose of aiding and assisting in calling another British Convention to meet in England.

You will remark I use the words another British Convention, because the prisoner, Watt, may possibly state to you that he meant by a convention an innocent meeting, that he meant a convention for the purpose of petitioning, that he meant a convention for legal purposes, and to pursue its objects by ordinary means. I state to you my lords, and gentlemen of the jury, and I trust I shall be able to lay before you evidence to satisfy you that Mr. Watt could have no such objects in view, because he completely acceded to the resolution of the British Convention, which was a resolution to act by force, and to resist the authority of the legislature. He completely acceded to the calling another British

Convention, of the meaning of which he could not be ignorant. You can hardly believe that a person would accede to the calling another British Convention, without knowing what the nature of that convention was, without knowing its views, and without having examined its objects. The only possible conclusion from the facts I have to lay before you is, that Watt acceded in calling another British Convention, and that he knew the nature of that convention, that was so meant to be called by all those persons engaged in the conspiracy, to be what I have stated, and I trust I shall prove it to be a direct conspiracy against the government and constitution of this country.

The formation, or organization as they call it, of the Committee of Union, I shall lay before you; and among other things, special care seems to be taken in the very beginning for the protection of the members of that committee. Their powers are so large that I do not know what farther remained to be given; their powers are thus described: "As representatives the Committee of Union are invested with every power their constituents can claim. The will of the constituent, at the appointment of his representative is, that he watch over his interest as a member of the community."—

Mr. *Hamilton*.—Mr. Anstruther has stated a very considerable portion of the printed book which lies upon the table, and is now going on with papers; but I do submit humbly to your lordships, that the jury's minds are not to be impressed with a repetition of evidence, which it is said is meant to be given. I say, the counsel for the crown are only entitled in this stage of the case, to state what is the substance they mean to bring forward; I take it they will mention none but what is intended to be brought forward; to state it generally is all they have a right to do, otherwise there would be a repetition of it, which I understand to be contrary to law.

Lord Justice Clerk.—Is it contrary to law for a counsel to state what he means to prove for the benefit of the Court and jury, that they may know what is meant to be proved?

Mr. *Hamilton*.—He is entitled to state the sum and substance, but not to read the papers themselves.

Mr. *Anstruther*.—The nature of the objection is such, that I do not think it necessary to state much in answer to it. It is my duty to lay before you the case I mean to prove for the crown; I trust I shall not state any thing to you which I cannot prove, but I have a right to state to you and the jury every thing which I mean to prove.

Gentlemen, I was stating to you what was the nature of the Committee of Union, of which Watt was a member, and I cannot state to you more correctly the nature of that committee, than by stating their own words, and giving their own account of themselves; it might be said, if I were to make comments or paraphrases upon the words of the Committee of Union, I was straining the evidence meant to be laid before you. I therefore give you their own account of themselves; their own acts will speak what they intended to do, and you will draw the conclusion.

"FUNDAMENTAL PRINCIPLES of the societies.

"First, the Committee of Union is composed of persons appointed by the people to look after their interest; and are consequently amenable for their conduct to the people. Therefore the people have the power of deposing, by means of a petition to the president of the Committee of Union, and by him reported to the societies, for misconduct in any of the representatives.

"Second, as representatives, the Committee of Union are invested with every power their constituents can claim; the will of the constituent, at the appointment of his representative is, that he watch over his interest, as a member of the community; but the will of the constituent is the constituent himself—Therefore, if a representative is attacked in the discharge of his duty, his constituents are bound by nature, reason, and honour to defend him."

Gentlemen, the other regulations for the formation of this Committee of Union will be proved and laid before you; but I must call your attention to this, that in the very outset, care is taken to provide for the defence of the Committee of Union itself. It is established as a principle to which every person who sent a delegate to that committee did accede, that if the representative was attacked in the discharge of his duty, his constituents were bound to defend him by nature, by reason and honour. Those representatives in the Committee of Union claimed every power the constituents themselves could claim; the extent of that power they have not defined, and I cannot state. This committee, with all the powers their constituents could claim, met for the purpose of procuring delegates to be elected to another convention, and for the purpose of providing money for the expense of such delegates. Not content however with the formation of such a committee as I have described to you, another committee was chosen, of which Watt was also a member, called by the name of the committee of ways and means. It was chosen by the Committee of Union, from amongst its own members; the societies at large chose the Committee of Union, the Committee of Union chose the Committee of Ways and Means. Watt was a member of the Committee of Union, and a member of the Committee of Ways and Means. This last was a secret committee; it kept no books, it committed nothing to writing; it had a power of expelling any of its own members; it was a permanent committee, and had the power of filling up the vacancies which might take place in its own body; it was to transact all the money matters of the Friends of the People; it was to

people more readily to arm, and in order to facilitate the plan, reports were spread among the societies of the Friends of the People, that the gentlemen of Goldsmiths-hall were getting arms. Reports were spread of the French landing; that the Friends of the People would be put in a double situation of danger, that they would be butchered by aristocrats on one hand, and by the French on the other, because the French would not know them. All these reports were spread for exciting the people to adopt the plan more readily. Mr. Watt and the committee of ways and means, about the time that Fairley was sent upon that mission, employed persons for the purpose of making arms. Watt went to a person of the name of Orrock, who will be produced to you, and informed him, he had an order from Perth for making four thousand pikes, employed him to make a number to be sent thither, and told him that more would be wanting, to be disposed of here. Many pikes were made by Orrock, and many will be produced to you here, which were found, some at Orrock's, and some at Watt's. It will be proved, that Orrock was not the only person employed in this business; Mr. Brown, in another part of this city, was also employed in making pikes. For what purpose these pikes were to be used, you can hardly doubt; the witnesses will tell you they understood they were to be used for the purpose of the great plan, which would provide for all and answer for all. About the same time of the mission of Fairley, another officer of the Friends of the People was elected, called a collector; every district was to furnish one for every ten or twenty of its members; they were to communicate directly with the committee of ways and means, to have a permanent preses, and be immediately under its authority. The business of these collectors was, to collect (to use their own phrase) *sense* and *money*, the opinions of the people, and what money they could; but another, not less important part of their business, which was more secret, and only communicated to the permanent preses of these collectors, was, that they were to have the distribution of the pikes and the command of the parties. A number of those pikes will be produced before you, which Watt desired to be carried down to the meeting of the collectors; the answer was, "I will not take them now, I cannot trust the collectors as yet."

Gentlemen, these are the facts I have to lay before you; I trust I shall prove them, and if I do, you can hardly doubt they will amount to high treason.

I state the plan to be, to overturn the legislature of this country, to supersede the king in his authority, and to supersede the legislature in the exercise of all its functions. I state the committee of ways and means to be acting for that object, and Mr. Watt, as one of that committee of ways and means, as one of that secret committee of the Friends of the People, to have met and conspired to overturn the constitution, not as an individual, but as a member of that committee of union, and of the committee of ways and means, to accelerate the downfall of the constitution, to facilitate the meeting of that convention, which was to frame its own laws, to render easy the election of those delegates, who were to resist the united authority of the legislature, to assist the great cause; the castle was to be seized, the judges and magistrates destroyed, and the king himself compelled to yield to the demands of the conspirators; arms were bought and provided, persons were sent round the country to collect force, and seduce the subjects from their allegiance; pikes were to be distributed, and leaders were appointed. I shall leave it to my lords the judges to state, whether, in point of law, this was not a sort of conspiracy, which, if executed, necessarily puts the person of the king in danger and peril; and whether, in point of law, these facts, if proved, be any thing short of high treason. I am sure, you gentlemen of the jury, when you come to consider the law and the fact, will do honour to yourselves and to your country, by whatever verdict you shall think it your duty to pronounce. I shall now proceed to call the evidence in the order I have stated; it was necessary I should state it at some length, in order that you should see the tendency of it as it is given; but I have only to conclude with this single observation, which I desire you to remember distinctly:—I have laid before you the facts, which I think I can prove, for the purpose of explaining to your understanding the bearings of the evidence; but you will recollect, that although I have stated the facts as a sort of clue for the purpose of your understanding the evidence, you are to lay out of your minds all the facts I have stated if I do not prove them; it is from the evidence you are to determine, and from that alone.

Mr. *Hamilton*.—I wish to give notice to the other side of the bar, that the evidence for the crown should be enclosed.

Lord Advocate.—I gave such directions. I hope they are so. I shall not proceed a step further, till I know that all the other witnesses are enclosed, except the lord provost, and Mr. Sheriff Clerk.

Mr. *Edward Laurun* sworn.

Mr. *Anstruther*.—Who are you?—I am one of his majesty's messengers.

Do you know a person of the name of Hardy?—Yes I do sir.

Did you seize any papers in his house, in the course of last summer?—I did, on the 12th of May, on a Monday morning.

Have you any of those papers?—I have them in my hand.

Mr. *Hamilton*.—My Lords, it is my duty, in discharging the trust that is reposed in me by the prisoner at the bar, to see that this trial

is conducted in the most regular manner, and that no circumstances may be laid hold of that may prejudice him; and also, that no reflections may be made upon myself, tending to show that I have not discharged my duty with propriety.—I understand it to be the practice, and understand it to be the law, with respect to high treason, laid down by the statute of Henry 6th as well as by that of king William that there must be two witnesses produced to an overt act. I understand Mr. Anstruther also, when he says one witness to one overt act, another to another is sufficient; but I understand, the prosecutor is not entitled to lead any evidence to an overt act not laid in the indictment. I admit there is an exception to that general rule, according to the practice of the law. Though he is not entitled to lead evidence with respect to an act not laid in the indictment, you may lead evidence with respect to an act, provided it tends to corroborate that which is specifically laid in the indictment.—There is another point which I contend is in my favour.—I say you cannot lead any evidence in regard to any extraneous fact, foreign to the issue, until such time as you have established and proved an overt act laid in the indictment.

And now I come to the objection in point of order.

The objection is, it is necessary for the prosecutor, in the first place, to substantiate and prove an overt act laid in the indictment brought home to the prisoner at the bar, before he goes to extraneous matter, whether done in London, or in any quarter of the globe, whether within twelve months, or done a century back from hence.

Mr. *Anstruther*.—I do not exactly know how the objection can arise to the question I was about to put—I am sure nobody will suppose it is necessary for Mr. Hamilton to say any thing for the purpose of clearing himself from the imputation being cast upon him; —there is nobody here who does not know his ability and readiness to perform his duty. As to the statement of the law, as laid down by Mr. Hamilton, I take it to be perfectly correct. The statute requires two witnesses before a person can be found guilty of high treason; but, at the same time, Mr. Hamilton fairly and candidly stated also, that one witness to one overt act, and one witness to another overt act, are all that is necessary.—It is also true, an overt act not laid in the indictment, cannot be proved, that is to say, it cannot be proved as an overt act; but a fact, not laid in the indictment, may tend to prove an overt act laid? neither of these points, however, are the grounds of objection.—Mr. Hamilton's objection is, that I must prove an overt act laid in the indictment, before I can produce any evidence whatever.—If I do not prove an overt act laid in the indictment, the prisoner must be acquitted, but it is impossible I can begin at the wrong end of a story.—I am to prove Watt's accession to a treasonable conspiracy; before I can prove that, I must prove such a thing as a conspiracy to exist—I am entitled to show a plot in general, before I come to give evidence of the prisoner being concerned in it.—All the judges of England, in the House of Lords at the trial of viscount Stafford,* held the law to be so.—The very objection was made against giving evidence of a plot, without showing the prisoner was implicated in it;—the answer was, it is time enough to make your objection, when I come to that part which implicates you. I believe the same course was followed, both by the House of Lords and the judges in 1745, and 1746; in those trials, the course was, to prove a rebellion in Scotland, and then to prove the part the prisoner had in that rebellion.

Mr. *Baron Norton*.—I do not understand the evidence that is to be objected to; it is not yet brought before us.

Mr. *Hamilton*.—The objection strikes me thus.—By this evidence, a plot is said to be existing in England, not a plot existing in Scotland; and it is surely the overt act of a plot existing in Scotland that the prosecutor is to give evidence of, but not of a plot in England.

Lord Advocate.—Mr. Anstruther explicitly opened that a conspiracy did, and has existed in Great Britain, which conspiracy whether in England or Scotland, is what the prisoner at the bar is accessary to; there is no objection made to the plot being in England, it is a plot in this great empire, to which, both in England and Scotland, we shall prove Watt accessary.

Lord Chief Baron.—As to the stating of Mr. Anstruther, it appears to me perfectly proper —so far as I can conjecture, the questions that have been put are proper, and he is taking a proper method to proceed; he has stated a plot in England, which was transferred to Scotland, and to which the prisoner at the bar is accessary; and what is proper to be done in this case? the whole plot may be brought before the jury, and it is necessary to prove a plot first existed.—this I conjecture from Mr. Anstruther's statement, and I am clearly of opinion, he is right in examining the evidence as he is doing.

Lord President.—It appears to be an objection no ways material.—It appears to me the examination begins in the proper way.

Lord Chief Baron.—I apprehend Mr. Anstruther will conduct it in the way most intelligible to the court and jury; the fair and proper way is, to prove the *corpus delicti*.—I know of no order in a criminal proceeding; he may examine witnesses in what manner he thinks proper to prove the charge.

Mr. *Anstruther* to Mr. Edward Lauzun. —Did you search Hardy's house?—Yes, I did, sir.

Did you find any papers there?—These are part of them that I have in my hand.

* See his case, *ante*, Vol. 7. p. 1293,

Did you find among them a letter, dated 25th May, 1793, and signed by a person of the name of Skirving?—Is that the letter, sir, you mean? [The witness produces a letter]

That is not the letter I mean—I mean one of the 25th of May, 1793.—This is it I believe.

See if that is dated?—It is the 25th of May, 1793,

How is it signed?—William Skirving.

Will you look if you have a letter of the 10th of June, 1793, signed by Margarot and Hardy;—have you got it in your hand?—Yes, I have.

How is it signed?—There is no name to it, it is M. M. and T. H.

Did you find any printed papers in Hardy's possession?—Several, sir.

Did you find any printed circular letters, signed T. Hardy?—I believe I did, sir.

Did you find that letter?—Yes, sir.

That letter you found in Hardy's possession? [Showing him another letter.]—Yes. sir, that letter I found in Hardy's possession.

Mr. *Knapp*.—It is a printed letter, signed "T. Hardy."

Mr. *Anstruther*.—I mean to prove it was found also at Perth, and different places in Scotland, which will be evidence of the generality of the plot.

Lord Advocate.—I desire this witness to remain in court, if you have no objection.

Mr. *Anstruther* to Lauzen.—You must take those papers with you, and bring them in again.—It will be necessary, as this witness is to be produced in another cause, he should keep the papers in his own custody.

William Scott sworn.

Do you remember in December 1793, Mr Skirving being apprehended?—Yes, I do.

Tell the story yourself, in your own way.—On the 4th of December 1793, a meeting took place with the lord advocate, the then sheriff of Edinburgh, Mr. Pringle, and myself, to consider what was proper to be done as to the meeting then sitting at Edinburgh, styling themselves the British Convention; when it was agreed upon and considered to be absolutely requisite that the leaders of that meeting should be taken into custody and their papers secured. In consequence whereof I, as is usual in such cases, directly applied to, and obtained from the sheriff, the warrants requisite, but which were not to be executed till next morning, as those against whom they were directed might not be found in their lodgings that night, or the papers wanted secured. On the morning of the 5th, pretty early, the warrants were given off to the proper officers, with instructions how to execute the same; and as there was reason to suppose that the minutes of the Convention, with other papers of consequence, would be found in Skirving's possession, two of the clerks in the sheriff clerk's office, viz. Mr. Dingwall and Mr. Mack, were sent along with the officer, who got the warrant against Skirving to assist in securing his papers, which were to be put into bags, carried with them for the purpose, and brought to the office along with him for examination and inspection before the sheriff, as it was considered that a minute inspection of the papers would take a considerable time. He was accordingly apprehended that morning in his own house, his papers secured, and he and they taken immediately to the office, in the manner directed, for examination and inspection in presence of the sheriff.

What followed then?—So soon as the sheriff came to the office, Mr. Skirving was examined, the seals removed from the bags containing his papers, and the papers inspected, when an inventory of such as appeared connected with the business on hand was taken; these papers marked and detained, and the others delivered to Mr. Skirving.

Were you present?—I was present at opening the bags containing the papers, and assisted at inspecting and inventorying the same.

Was Skirving present?—He was.

What became of them?—They remained in my custody and the then sheriff's until sent to the crown agent, with the precognition to prepare for the trials; and since the trials were over, I borrowed part of them from the clerks of the justiciary, and got the remainder from Mr. Warrender the crown agent, since which they have been in my possession.

Should you know them again?—Yes, from their being marked by me when inventoried as above.

Have you any now?—Yes, I have.

Produce those you have.—"Here is what is intituled, Scroll Minutes of the British Convention."* It consists of 95 pages, and as that was considered a material paper, we all signed our names on the back of it at full length; that is, the sheriff substitute Mr. Davidson, Mr. Dingwall, Mr. Mack, and myself.

What is that?—That is minutes of debate of the general committee which met at Edinburgh after the arrival of the English delegates.

Mr. *Hamilton*.—My lord, it appears to me that the evidence as to these papers is entirely lost, the chain is broken; so long as they remained in Scott's possession, it will authenticate them, as being found in Skirving's possession; but out of Scott's possession, the chain is dissolved, and you cannot mend it again. It was mentioned to the last witness that it was necessary he should keep the papers for the sake of another trial to be had; but he did not so formerly, so the link is gone, and it is impossible for him to authen-

* See it prefixed to the trial of Skirving, *ante*, p. 891.

ticate these papers, and to prove them found in Mr. Skirving's possession.

Mr. *Dundas.*—A short question will make very clear.

Did you mark them?—I did.

Lord President.—Let Scott be asked whether they are or are not the same, and what reason he has to believe they are the same papers?—They are the identical papers I found—my initials are upon them.

What is the printed paper?—It is minutes of the general committee wrote upon one of Skirving's letters. There is a letter from D. Stuart, dated London, 16th October 1793, to Mr. Skirving at the head of Horse Wynd, Edinburgh; another from Thomas Hardy from the Corresponding Society, 15th November 1793; another letter from Thomas Hardy of the 29th November 1793.

Addressed to whom?—Addressed to Margarot and Gerrald, delegates; the other was also addressed to Margarot and Gerrald, delegates.

What is that in your hand?—A letter from Henry Shipley, Nottingham, dated 6th July 1793, also addressed to Mr. Skirving—this is the Resolutions of the extraordinary general meeting of the society for constitutional information held at the Crown and Anchor Tavern London, and directions to their delegates to the British Convention.

Was that paper taken out of Skirving's papers?—It was.

What date is it?—The 28th October 1793.

Look at these papers, and see if you recognize these, and by what means you do so—what is that you have in your hand?—It is a letter from Thomas Hardy to Mr. Skirving, addressed on the back to William Skirving, secretary to the Convention and the Friends of the People, Edinburgh, dated London, 17th May 1793. Here is another letter from the same gentleman, of the 5th October 1793, directed to William Skirving, at the head of Horse Wynd, Edinburgh, This is instructions to citizen Gerrald from the London Corresponding Society, dated 24th October 1793, signed Richard Hodson, chairman, and Thomas Hardy, secretary, which is also marked citizen Gerrald's commission from the London Corresponding society, 24th October 1793 signed by Thomas Hardy; another letter from Mr. Hardy, dated 24th October 1793, directed for Mr. Skirving, head of Horse Wynd, Edinburgh, and that is the whole.

Mr. *Dundas.*—Did you seize any papers of Mr. Margarot's, Mr. Scott?—Yes, I did.

Look at those and see if you know them again, and tell us how you got them?—On the same morning of Thursday the 4th of December, another officer was sent to search the place where Margarot and Gerrald resided, being at the Black Bull Inn, Leith-street.

What is his name?—Lyon; he found Margarot and Gerrald in the same inn, he took them into custody, and also their papers; when coming away with the papers, Mr. Margarot said it would be more convenient to carry them in a trunk; accordingly they were put in a trunk, which Margarot locked and kept the key; after being examined in the office, he was desired to deliver up the key, so as the papers might be inspected, which he refused to do; farther proceedings were delayed till next day, in hopes that he would then give up the key. But finding that he would not do so, I applied for and obtained from the sheriff a warrant to open the trunk, and to bring Margarot and Gerrald to the office to be present; they came there, and the key being still refused, a smith was sent for to open the trunk, when Margarot took the key out of his pocket, held it in his hand, saying, if the messenger took it from him he might have it, but not otherways: then the messenger did take the key, and opened the trunk, in presence of the sheriff, Margarot, Gerrald, myself and others; the papers were then inspected, and such as appeared applicable to the business on hand were inventoried, and the others given up to Margarot and Gerrald.

What is that?—It is a letter signed Thomas Hardy, dated 24th November 1793, directed, Mr. Margarot and Mr. Gerrald, delegates from London.

Did you get any of Mr. Sinclair's papers?—Yes, he was lodged in the same house with Margarot and Gerrald.

Was he one of the persons apprehended on the warrants which you obtained?—Yes, he was, and was a member of the British convention.

What messenger took him into custody?—Mr. Lauzen. Mr. Sinclair could not attend for examination that day, but his papers were brought by the officer the same morning to the sheriff clerk's office, and remained there till Sinclair was well enough to be examined and have his papers inspected and inventoried.

Witness.—Here is Mr. Sinclair's amendment of Mr. Callender's motion; it was then marked by Mr. Davidson, by Mack and myself.

Did Sinclair find any of his papers there when he came to be examined?—I think he did.

There is another paper intituled "a Motion of A. Callender;" was that among Sinclair's papers too?—Yes, it was also found amongst his papers.

Mr. *Dundas.*—Were you in Nicholson-street at the dispersion of the convention? were you employed in that business?—On Thursday, the 5th December, 1793, the British Convention was dispersed by the magistrates of Edinburgh, when assembled in their usual place of meeting, in Blackfriar's-wynd in Edinburgh; and the night following, the convention having met in a wright's shop in the Cross-causeway, I accompanied Mr. Davidson, the sheriff-substitute, with others, to assist in dispersing the same.

Where is that?—It was in lady Lawson's yard in the Cross-causeway. Mr. Davidson went into the meeting before me, and on my coming in, I found the place quite crowded to the door.

Who was in the chair when you went there?—When I came into the room no person was in the chair, but Margarot standing very near it—the first thing I heard said was, that the meeting were desired to recollect they voted themselves a permanent convention the last night.

Was it Margarot you heard say this?—Yes, he also addressed himself to the meeting to this effect. As there was no person in the chair, he would take it;—he was therefore called unanimously to take it, and he did so. He moved they should proceed in their business, saying it was a petition to parliament or to the king, that was under consideration, and Mr. Gerrald was going to proceed when Mr. Davidson asked of Margarot whether this was the British Convention, and being told it was, he said he came there as sheriff substitute of the county to disperse them, and if they did not do so he would compel them; Margarot said force was necessary to be used; whereupon Mr. Davidson took Margarot by the hand, and led him out of the chair, after which the meeting dispersed.

Do you know Skirving's hand-writing?—Yes, I do.

Mr. Anstruther produced some papers again to Mr. Scott, and asked him if they were of Mr. Skirving's hand-writing.—There is none of these Mr. Skirving's hand-writing, except his subscription to one of them.

You know it to be his subscription?—Yes; neither of them in my opinion are Mr. Skirving's hand-writing, but there is his subscription to a letter addressed to Mr. Hardy, dated Edinburgh, 25th May, 1793.

Court.—Is that subscription to that letter his subscription?—In my opinion it is.

What is that letter? what is the date?—The 25th May 1793 [the three papers were put in].

Mr. *Anstruther.*—We must read that letter.

Cross-examined by Mr. *Hamilton.*

How do you know Skirving's subscription?—I have seen his hand-writing often.

Mr. *Erskine.*—Have you seen him write?—I have.

Lord Advocate.—He says he has seen him write, it is legal evidence.

John Taylor sworn.

Mr. *Anstruther.*—Where do you live?—In Fleet-street, in the city of London.

What is your profession?—I am not in any, I have a small independency.

You live upon your property?—I do so, sir.

Do you know such a society in London, as the London Corresponding Society?—I do, sir.

Are you a member of that society?—I was.

Do you know a person of the name of Hardy among them?—I do, sir.

What is his first name?—Thomas.

Is he a member of the London Corresponding Society?—He was.

In what character did he act?—As secretary to the society at large.

Have you seen him act as such?—I have, sir.

Do you know his hand-writing, Mr. Taylor?—I do, sir.

Look at that?—To the best of my belief this is his hand-writing. I have seen him write on the divisions several times, and to the best of my belief it is his hand-writing.

Mr. *Warrender.*—This is the certificate of citizen Margarot's election to be a delegate to the convention; that is one of the papers produced by Scott. The next is a letter from Mr. Hardy to Skirving, dated 25th October, 1793.

Is that his hand-writing?—It is.

Mr. *Anstruther.*—This is a certificate of Gerrald, to be a delegate of the British convention. [Another shown Mr. Taylor].

Mr. *Taylor.*—That I believe to be his.

Those are the articles of instruction given to Mr. Gerrald by the London Corresponding Society. The signature at bottom is T. Hardy, secretary?—That also is his [looking at the paper].

Mr. *Anstruther.*—That is a letter to William Skirving, secretary to the Friends of the People at Edinburgh, in answer to the letter of the 5th of May; also a letter from Hardy to Skirving, dated the 5th of October, 1793—are there any more?—This I also know; I believe that to be his hand-writing.

Mr. *Anstruther.*—This is a letter from Hardy to Margarot and Gerrald, delegates from London, dated November 8th 1793?

Witness.—From the general character of this, I believe it to be his hand-writing.

Those initials?—Yes.

Mr. *Anstruther.*—You believe this to be Hardy's hand-writing?—Yes; it is a letter from Hardy signed, M. M. C. T. H. S.

Counsel.—Which we say is Maurice Margarot, chairman, and Thomas Hardy, secretary; it is dated London, 10th June, 1793, found amongst Hardy's papers.

Mr. *Anstruther.*—Will you explain to the Court and to the jury, the constitution of the London Corresponding Society, so far as you know it?—I understood the London Corresponding Society was a very large body of people; that they were divided into several divisions; I understood as many as thirty, and numbered 1, 2, 3, 4, 5, and so on. The leading divisions were the 2nd and 29th; those two I constantly attended as member of the 2nd division and visitor of the 29th; but I believe the whole amounted to about 41. I took minutes of what passed generally, always when I took them it was after quitting the place among them. I have got a number

of the divisions wrote down, which I have in my pocket if necessary to produce. When they met, there was a general committee, I understood to be a permanent one, consisting of a delegate from each division. This met on a Thursday, the proceedings and conduct of that committee on that day were always reported by a delegate of that division on the following meeting night. There was a Committee of Correspondence and a Committee of Secrecy, and lately there was a Committee of Emergency.

When was the Committee of Emergency formed?—On the 12th of May, in the 2nd division, and on the 13th May in the 29th, in May last. I hope I may have indulgence to refer to my notes.

Do you recollect a meeting of the society at the Globe tavern?—I do.

Was that a general meeting?—A general meeting, advertised as such.

Who was in the chair at that meeting?—A person of the name of Martin, whom I afterwards learnt was an attorney by profession.

Was Mr. Hardy there?—Mr. Hardy I saw there, I was not on that day a member of the society.

May last?—May 1794.

What date was the meeting?—Upon the 20th January, 1794, at the Globe tavern.

Do you recollect what passed at that meeting, and what number were present?—What number were present! there were a thousand people; the crowd was so great that the floor in one room gave way, and they moved from the lower room to the upper one, usually understood as the assembly room; the chairman and twelve persons, Thelwall and Richter stood in the orchestra, they moved the resolutions that were afterwards published.

These resolutions you say were agreed to by the meeting, and afterwards printed?—They were.

Mr. *Anstruther.*—What passed at that metting?—The chairman introduced a small preface as to the intention of the meeting, which was to have these resolutions or address, as it was termed, read to the meeting, and to take their opinion.

Was that address read?—It was by Richter, and afterwards Thelwall the chairman put the question, and they were carried by a show of hands, unanimously.

Do you recollect the substance of any of the speeches that were made?—The time has so long elapsed, or some particular passages I should. One of the resolutions was the general or permanent committee, of which I have before spoken, was to meet every day, in order to watch the motions of parliament, and if they saw any bill introduced to bring over foreign troops, or suspend the Habeas Corpus act, or prevent meetings for constitutional information, then they were to oppose that, and repel force by force.

You have said that those resolutions were afterwards printed?—I have, sir.

Have you any copies of these printed resolutions?—I have, sir [A copy shown him].

Mr. *Taylor.*—That is one.

From whom did you receive that copy of the resolutions?—I received this from the hands of a person of the name of Moore, in the presence of Hardy the secretary, and upon my requesting him to give me one, I saw several of those resolutions thrown about the room, and distributed by Thelwall and Richter, to the best of my recollection. I saw one in another person's hands, and I believe this to be the same; I asked Thelwall for one, and at that time he said he had none left.

You received it from a person of the name of Moore, and you saw several of those resolutions thrown about the room and distributed by Thelwall and Richter?—Yes.

Did you receive it as a resolution of that meeting?—I did.

You went there on purpose to get it?—I did. I made an application on the 22nd. On the 23d I received it. I can state the conversation that passed at that meeting.

State the conversation that passed at the time of your receiving it from Moore in the presence of Hardy.—On my meeting Mr. Moore at the corner of the old Bailey, I asked him for one, he said he had not got one; but if I would apply to Mr. Hardy and use his name, he would give me one; in consequence of which I called on Hardy, he said he had none by him, but he would go to the printer's that evening, and if I would look in on the following morning I should have one; I went to his shop, and I said I came for one of those addresses—Hardy said to Moore, who was present, have you any?—He said, if the person will go to my house I will give him one.—Mr. Hardy said, have you one in your pocket;—He said he had.—He pulled it out, and gave it to me, and this is the paper marked by me.

Do you remember being present at a meeting of the London Corresponding Society that was held at Chalk Farm?—Yes.

On what day?—On the 14th of April 1794.

Where is Chalk Farm?—It is in the road leading from Tottenham Court Road to Hampstead, about a quarter of a mile out of the main road.

How far is it from London?—About two miles, or a mile and a half.

What was that meeting?—It was exactly of the same nature as the one at the Globe Tavern,—it was for convening together the society at large, upon which several resolutions were moved and entered into.

How many people were supposed to be there?—I heard three thousand, and I apprehend about two thousand.—It was held upon the bowling place.

Who was in the chair?—A person of the name of Lovett.

Was Lovett a member of the London Corresponding Society?—I understood he was.

And was Hardy there?—Hardy was there; but I did not see him act in any capacity.

collect money for defraying the expenses of delegates? it was to collect money for all the other purposes whatever, engaged in by the Friends of the People; and particularly it was to collect money for the support of what they termed the great cause.

The Committee of Ways and Means, which was formed some time about the beginning of March last, proceeded immediately to act; it proceeded to elect a person to be their treasurer, whose name was Downie. Watt was not treasurer, Downie was treasurer of that committee; that committee, after it had expressly met to regulate all the money matters of the Friends of the People, thought it right to communicate with all the different societies that existed in the different parts of this kingdom. Its first act, as far as I know, for I have told you it was a secret committee, was to send round to the different parts of the country, to recommend rules which it had framed for the regulation of all the other societies. The object was, to make itself the centre of the Friends of the People, the point of union for all the disaffected in Scotland, and to be the medium from whence all instructions were to be given. I beg particularly to call your attention to this, that the committee of Ways and Means, of which Watt was a member, took upon itself to be the medium through which directions and instructions were to be given to all the Friends of the People throughout the kingdom; it desired all people to put their money into the hands of its treasurer, Mr. Downie, which was not to be accounted for or disbursed at the will of the person that gave it, but was to be disbursed in such a manner as should be most calculated to promote the great cause. It directed the different committees in the country to inform the committee of Ways and Means how many Friends they had, upon whose patriotism they could rely with most explicit confidence, and who would spare no exertions in promoting the great cause. It consisted of five members only. You therefore see, that if this plan was to be carried into execution, all Friends of the People in Scotland were to trust, and implicitly obey the orders of the committee, who were to disburse their money as they thought fit, and who dispersed their directions from one end of Scotland to the other.

This plan and these directions will be laid before you in a printed circular letter, sent by the prisoner at the bar to the different parts of the country, by one of the ambassadors of this self-created committee, to every word of which I request your particular attention.

As one leading part of the duty of this committee was, to use means to procure another convention, as it was part of their project to carry into effect the last resolution of the British Convention, and to co-operate with the disaffected and seditious in every part of the kingdom, in the execution of this scheme, while on the one hand it formed itself as the focus of sedition in Scotland, on the other it closely connected itself with the seditious in England. I have already stated to you the letter signed by Hardy, which was sent to this country. One of the first acts of Mr. Watt and his committee was, to meet for the purpose of answering that letter, for the purpose of opening a correspondence with the London societies, for the purpose of aiding their views and furthering their projects of calling another British Convention. Indeed his project and theirs were one and the same, namely, to procure another convention to meet to resist the authority of the existing government, and mould the constitution at its will. And having coupled Watt with the British Convention, by his adopting its views and following up its objects, having coupled him with this meeting, for the purpose of electing delegates and collecting money for the expense of those delegates when chosen, I connect Watt again with the convention that was to meet in England; for I will prove him sitting in committee and in consultation, for the purpose of entering into a correspondence with Thomas Hardy, for the purposes I have stated, of calling a British Convention to meet in England, of the nature and with the powers and for the purposes that have been explained to you.

Another of the acts of the committee of ways and means was an attempt to debauch the soldiers of this country, to seduce the Fencibles, who were then on their march to England, and were actually quartered at Dalkeith. I will prove that Watt and other members of that committee met, composed, printed, and circulated a paper, calculated to seduce from their duty the soldiers of his majesty, called the Fencibles, while quartered at Dalkeith. The intention of this paper is so plain, that I shall make no comment upon it; it will be laid before you, and it is impossible you can read it and mistake its meaning. I leave it to your good sense to read this paper and say whether it does not attempt to instil into the minds of the soldiers an idea that if they left this country, the government or its friends and supporters would butcher their wives and children whom they had left behind them; and whether it does not instigate them to mutiny and revolt, and hold out to them the promise of the support of thousands in their rebellion. Such is the idea endeavoured to be conveyed, and that paper I will bring home distinctly to Mr. Watt. I will prove the types from which it was printed, set, and standing in his house; I will prove his being present when it was composed, and when directions were given to a person where to get a parcel of those papers: that person went and got them by these directions, and having received them, he carried them by the direction of the committee of ways and means to Dalkeith, and delivered them into the hands of the soldiers. Thus will I trace the paper from the prisoner at the

people more readily to arm, and in order to facilitate the plan, reports were spread among the societies of the Friends of the People, that the gentlemen of Goldsmiths-hall were getting arms. Reports were spread of the French landing; that the Friends of the People would be put in a double situation of danger, that they would be butchered by aristocrats on one hand, and by the French on the other, because the French would not know them. All these reports were spread for exciting the people to adopt the plan more readily. Mr. Watt and the committee of ways and means, about the time that Fairley was sent upon that mission, employed persons for the purpose of making arms. Watt went to a person of the name of Orrock, who will be produced to you, and informed him, he had an order from Perth for making four thousand pikes, employed him to make a number to be sent thither, and told him that more would be wanting, to be disposed of here. Many pikes were made by Orrock, and many will be produced to you here, which were found, some at Orrock's, and some at Watt's. It will be proved, that Orrock was not the only person employed in this business; Mr. Brown, in another part of this city, was also employed in making pikes. For what purpose these pikes were to be used, you can hardly doubt; the witnesses will tell you they understood they were to be used for the purpose of the great plan, which would provide for all and answer for all. About the same time of the mission of Fairley, another officer of the Friends of the People was elected, called a collector; every district was to furnish one for every ten or twenty of its members; they were to communicate directly with the committee of ways and means, to have a permanent preses, and be immediately under its authority. The business of these collectors was, to collect (to use their own phrase) *sense* and *money*, the opinions of the people, and what money they could; but another, not less important part of their business, which was more secret, and only communicated to the permanent preses of these collectors, was, that they were to have the distribution of the pikes and the command of the parties. A number of those pikes will be produced before you, which Watt desired to be carried down to the meeting of the collectors; the answer was, "I will not take them now, I cannot trust the collectors as yet."

Gentlemen, these are the facts I have to lay before you; I trust I shall prove them, and if I do, you can hardly doubt they will amount to high treason.

I state the plan to be, to overturn the legislature of this country, to supersede the king in his authority, and to supersede the legislature in the exercise of all its functions. I state the committee of ways and means to be acting for that object, and Mr. Watt, as one of that committee of ways and means, as one of that secret committee of the Friends of the People, to have met and conspired to overturn the constitution, not as an individual, but as a member of that committee of union, and of the committee of ways and means, to accelerate the downfall of the constitution, to facilitate the meeting of that convention, which was to frame its own laws, to render easy the election of those delegates, who were to resist the united authority of the legislature, to assist the great cause; the castle was to be seized, the judges and magistrates destroyed, and the king himself compelled to yield to the demands of the conspirators; arms were bought and provided, persons were sent round the country to collect force, and seduce the subjects from their allegiance; pikes were to be distributed, and leaders were appointed. I shall leave it to my lords the judges to state, whether, in point of law, this was not a sort of conspiracy, which, if executed, necessarily puts the person of the king in danger and peril; and whether, in point of law, these facts, if proved, be any thing short of high treason. I am sure, you gentlemen of the jury, when you come to consider the law and the fact, will do honour to yourselves and to your country, by whatever verdict you shall think it your duty to pronounce. I shall now proceed to call the evidence in the order I have stated; it was necessary I should state it at some length, in order that you should see the tendency of it as it is given; but I have only to conclude with this single observation, which I desire you to remember distinctly:—I have laid before you the facts, which I think I can prove, for the purpose of explaining to your understanding the bearings of the evidence: but you will recollect, that although I have stated the facts as a sort of clue for the purpose of your understanding the evidence, you are to lay out of your minds all the facts I have stated if I do not prove them; it is from the evidence you are to determine, and from that alone.

Mr. *Hamilton*.—I wish to give notice to the other side of the bar, that the evidence for the crown should be enclosed.

Lord Advocate.—I gave such directions, I hope they are so. I shall not proceed a step further, till I know that all the other witnesses are enclosed, except the lord provost, and Mr. Sheriff Clerk.

Mr. *Edward Lauzun* sworn.

Mr. *Anstruther*.—Who are you?—I am one of his majesty's messengers.

Do you know a person of the name of Hardy?—Yes I do sir.

Did you seize any papers in his house, in the course of last summer?—I did, on the 12th of May, on a Monday morning.

Have you any of those papers?—I have them in my hand.

Mr. *Hamilton*.—My Lords, it is my duty, in discharging the trust that is reposed in me by the prisoner at the bar, to see that this trial

Did you find among them a letter, dated 25th May, 1793, and signed by a person of the name of Skirving?—Is that the letter, sir, you mean? [The witness produces a letter]

That is not the letter I mean—I mean one of the 25th of May, 1793.—This is it I believe.

See if that is dated?—It is the 25th of May, 1793,

How is it signed?—William Skirving.

Will you look if you have a letter of the 10th of June, 1793, signed by Margarot and Hardy;—have you got it in your hand?—Yes, I have.

How is it signed?—There is no name to it, it is M. M. and T. H.

Did you find any printed papers in Hardy's possession?—Several, sir.

Did you find any printed circular letters, signed T. Hardy?—I believe I did, sir.

Did you find that letter?—Yes, sir.

That letter you found in Hardy's possession? [Showing him another letter.]—Yes. sir, that letter I found in Hardy's possession.

Mr. *Knapp*.—It is a printed letter, signed "T. Hardy."

Mr. *Anstruther*.—I mean to prove it was found also at Perth, and different places in Scotland, which will be evidence of the generality of the plot.

Lord Advocate.—I desire this witness to remain in court, if you have no objection.

Mr. *Anstruther* to Lauzen.—You must take these papers with you, and bring them in again.—It will be necessary, as this witness is to be produced in another cause, he should keep the papers in his own custody.

William Scott sworn.

Do you remember in December 1793, Mr Skirving being apprehended?—Yes, I do.

Tell the story yourself, in your own way.—On the 4th of December 1793, a meeting took place with the lord advocate, the then sheriff of Edinburgh, Mr. Pringle, and myself, to consider what was proper to be done as to the meeting then sitting at Edinburgh, styling themselves the British Convention; when it was agreed upon and considered to be absolutely requisite that the leaders of that meeting should be taken into custody and their papers secured. In consequence whereof I, as is usual in such cases, directly applied to, and obtained from the sheriff, the warrants requisite, but which were not to be executed till next morning, as those against whom they were directed might not be found in their lodgings that night, or the papers wanted secured. On the morning of the 5th, pretty early, the warrants were given off to the proper officers, with instructions how to execute the same; and as there was reason to suppose that the minutes of the Convention, with other papers of consequence, would be found in Skirving's possession, two of the clerks in the sheriff clerk's office, viz. Mr. Dingwall and Mr. Mack, were sent along with the officer, who got the warrant against Skirving to assist in securing his papers, which were to be put into bags, carried with them for the purpose, and brought to the office along with him for examination and inspection before the sheriff, as it was considered that a minute inspection of the papers would take a considerable time. He was accordingly apprehended that morning in his own house, his papers secured, and he and they taken immediately to the office, in the manner directed, for examination and inspection in presence of the sheriff.

What followed then?—So soon as the sheriff came to the office, Mr. Skirving was examined, the seals removed from the bags containing his papers, and the papers inspected, when an inventory of such as appeared connected with the business on hand was taken; these papers marked and detained, and the others delivered to Mr. Skirving.

Were you present?—I was present at opening the bags containing the papers, and assisted at inspecting and inventorying the same.

Was Skirving present?—He was.

What became of them?—They remained in my custody and the then sheriff's until sent to the crown agent, with the precognition to prepare for the trials; and since the trials were over, I borrowed part of them from the clerks of the justiciary, and got the remainder from Mr. Warrender the crown agent, since which they have been in my possession.

Should you know them again?—Yes, from their being marked by me when inventoried as above.

Have you any now?—Yes, I have.

Produce those you have.—"Here is what is intituled, Scroll Minutes of the British Convention."* It consists of 95 pages, and as that was considered a material paper, we all signed our names on the back of it at full length; that is, the sheriff substitute Mr. Davidson, Mr. Dingwall, Mr. Mack, and myself.

What is that?—That is minutes of debate of the general committee which met at Edinburgh after the arrival of the English delegates.

Mr. *Hamilton*.—My lord, it appears to me that the evidence as to these papers is entirely lost, the chain is broken; so long as they remained in Scott's possession, it will authenticate them, as being found in Skirving's possession; but out of Scott's possession, the chain is dissolved, and you cannot mend it again. It was mentioned to the last witness that it was necessary he should keep the papers for the sake of another trial to be had; but he did not so formerly, so the link is gone, and it is impossible for him to authen-

* See it prefixed to the trial of Skirving, *infra*, p. 891.

You say they came to some resolutions?—They did.

Were they read?—They were read by Richter in part, and part by a person of the name of Hodson.

Which of the Hodsons was it?—Hodson, a hatter in Westminster.

Do you remember whether those resolutions were put generally or separately?—They were put separately.

One by one?—One by one.—The chairman addressed the meeting, requesting to take their opinion, whether they should be all read together, and carried by one motion, or whether they should be all read singly, and carried separately;—they were all carried separately.

Were their resolutions printed?—They were.

Have you any copy of those resolutions?—I have.—[Producing papers.]

From whom did you receive those papers?—By the memorandum I have made upon it. I received this from Thomas Hardy on the 21st of April, the Monday succeeding.

Where did you receive them?—At the second division of the London Corresponding Society.

Of how many might that consist?—A hundred and twelve.—it was proved by the book of the sub-secretary, Pearce, on the 12th of May—I beg pardon, I meant to say, it was what I understood to be effective members.—I understand that division had 700 belonging to it.—It at that moment consisted of 112, it was proved, from their having paid their quarterage money on the 25th of March preceding.

How much was the quarterage money?—One shilling and a penny.

These resolutions you say you received from Hardy?—I did.

Did you receive them as the resolutions that had passed at Chalk Farm?—Yes I did.

Are they the same?—Nearly so.—To the best of my recollection, I think there is some trifling variations.

State them.—If I look at my minutes I can tell.

Did you make them at the time?—Immediately upon my coming home.

What is the variation between the printed copy of the minutes you got from Hardy and the others?—In sense and substance it was thus, as I understood the sense of it,—that the ministers having advised the King to such conduct as brought Charles 1st to the block, and drove the prince his son from the throne; therefore, the ministers have been guilty of high treason.

Mr. *Hamilton*.—I submit to the Court, that the examination should be confined solely to that paper, and the witness has no right to go to any extraneous examination.

Mr. *Anstruther*.—I mean to prove to the Court and Jury what passed at the meeting at Chalk Farm.—The witness tells you, he received from Mr. Hardy, of the London Corresponding Society, a paper, containing a resolution, said to be then come to, and from his minutes taken at the time, he says they are not exactly the same resolutions as were made at Chalk Farm, there is a variation.

Mr. *Hamilton*.—I do not see how you are to correct written evidence by the testimony of this gentleman, from his own minutes only.

Lord President.—Was you present at the meeting?—I was.

You heard the resolutions?—Yes.

You recollect those were the words that passed?—I attended particularly to them; they are the words that passed.

Mr. *Hamilton*.—There cannot be two resolutions of a different tenor in one and the same place; the objection lies to one or the other.

Mr. *Anstruther*.—The witness was present and took notes, but whether he did or not, he is entitled to give evidence of what passed at that period: there may have been reasons for Hardy's not putting in print, what *de facto* was voted.

Lord President.—The Jury have heard every thing the witness said about it.

Jury.—How do you know it was not the same as the resolution?

Mr. *Anstruther*.—Read again the difference between the printed minutes, and the actual resolution that passed: if I understand the gentlemen of the jury that is what they want to know.

Mr. *Taylor*.—It was therefore resolved that the present ministry was guilty of high treason; these express words I believe are not in the printed evidence, but being impressed on my memory I think I can speak positively to them.

Lord Advocate.—Being impressed upon your memory you think you can speak positively to them?—The words were impressed upon my memory.

Court.—The Jury will understand nothing is yet put so as to affect the prisoner.

Mr. *Anstruther*.—I stated to the Jury I would prove the prisoner concerned in a plan to call another British convention, and I will prove who were the persons who formed the plan, and what sort of a convention it was they meant should meet.

Lord Advocate.—At the meeting at the Globe tavern, was any resolution made in your hearing with regard to the number of papers intended to be printed?—I understood 100,000 to the best of my recollection.

One hundred thousand copies of those resolutions entered into that night, were to be printed?—Yes.

Did you know or understand for what purpose they were to be printed?—To be distributed to the society; the friends and members of the society.

I will put the same question, whether the resolutions entered into at Chalk Farm were

printed?—In the close of the business, Mr. Richter moved two hundred thousand copies should be printed, observing one hundred thousand had not been found sufficient, as voted at the Globe tavern for distribution of them to the body at large.

Was that resolution agreed to?—It was.

Of the division No. 2, of the London Corresponding Society those that had paid quarterage were 112 persons whilst the members of that division were 700, you said?—I did.

What was the reason of your making that a distinction of the effective members of that division?—For this reason; Hardy, who I understood was the secretary at large of the society, was arrested, and Pearce, who received the collections on the 1st of April as sub-secretary, had been a delegate, but resigned on the first of April, then was appointed as sub-secretary; the society met then in the committee room, and a chairman was appointed; any indiscriminate person that voluntarily came forward was nominated a delegate, who always acted and did the business when Hardy was not present. The delegate acted as delegate and secretary. The delegate then read the report of the committee; after that had been done, Pearce moved that one member out of ten should be chose to add to the standing permanent committee, in order to make at that time a committee of emergency, that their proceedings might be more firm and positive; he produced a book, in which book was the names of the members entered which had paid the preceding quarter. He took up a book, and said, I find here is 112, in consequence of which, one out of ten was to be appointed out of that aggregate number? he used this expression, "I have got this book, God knows what is become of the rest, I suppose Mr. Dundas and Mr. Pitt have got them."

It was upon the evening of Hardy's arrest this measure was taken in the second division of the London Corresponding Society?—Certainly. This was the reason of the committee of emergency; taking one out of ten, and making them a committee of emergency.

Have you ever heard of military divisions?—I have.

In what division of the society?—It was the 29th division of the society. I understood there was produced an instrument, a kind of pike and short stick to act as a walking stick, it had at the end a brass ferule and another at the head of it; it struck me, I thought it exceedingly well executed. I was given to understand, a short or long dagger was to be screwed into it, and its execution would be done momentarily. Then this altercation upon a trifling matter arose from a man of the name of Oxlade, who appeared in clothes of a red colour. Some member objected to it, as bearing marks of aristocracy; he said he had been in a military line, and held a place in the society, he said, in the same situation. That the London Corresponding Society was not without places of a military resort. I asked where, as he seemed to be speaking of it as to persons that did not know. Spence of Middle Row had a direction, and he was a delegate of the third division, and he gave me to understand it was situated somewhere in Saint George's Fields.

Cross-examination by Mr. *Hamilton.*

You say you have a little competency to live upon in London?—I have.

Will you explain that;—I have East India Company's stock 1,350*l.* produces annually 94*l.* a year; it is in two names, Mary Ann Halliday and another.

Pray, what brought you to Scotland?—I was directed to come here.

By whom?

Mr. *Anstruther.*—I brought him to Scotland, there is no doubt about it. I brought the gentleman here, and I have a right to bring my witnesses from whatever part I can get them.

I wish to have the printed minutes read of Chalk Farm, and the Globe tavern.

A printed paper was then read of the proceedings at the Globe tavern, Strand, as follows:—

"At a general meeeting of the London Corresponding Society held at the Globe tavern, Strand, on Monday the 20th day of January 1794, citizen John Martin in the chair; the following address to the people of Great Britain and Ireland, was read and agreed to.—Citizens; We find the nation involved in a war, by which in the course of one campaign immense numbers of our countrymen have been slaughtered, a vast expense has been incurred, our trade, commerce, and manufactures are almost destroyed, and many of our manufacturers and artists are ruined and their families starving.

"To add to our affliction, we have reason to expect that other taxes will soon be added to the intolerable load of imposts and impositions with which we are already overwhelmed; for the purpose of defraying the expenses which have been incurred in a fruitless crusade, to re-establish the odious despotism of France.

"When we contemplate the principles of this war, we confess ourselves to be unable to approve of it, as a measure either of justice or discretion. And if we are to form our calculation of the result, from what has already passed we can only look forward to defeat, and the eternal disgrace of the British name.

"While we are thus engaged in an expensive and ruinous foreign war, our state at home is not less deplorable.

"We are every day told by those persons who are interested in supporting the corruption list, and an innumerable host of sinecure placemen, that the constitution of England is the perfection of human wisdom? that our laws (we should rather say their laws) are the perfection of justice; and that their adminis-

tration of those laws is so impartial, and so ready, as to afford an equal remedy both to the rich and to the poor, by means of which we are said to be placed in a state of absolute freedom, and that our rights and liberties are so well secured unto us, as to render all invasion of them impossible.

"When we ask how we enjoy these transcendant privileges?—we are referred to Magna Charter, and the Bill of Rights; and the glorious Revolution in the year 1688 is held out to us as the bulwark of British liberty.

"Citizens; We have referred to Magna Charter, to the Bill of Rights, and to the Revolution, and we certainly do find that our ancestors did establish wise and wholesome laws; but we certainly find, that of the venerable constitution of our ancestors hardly a vestige remains.

"The only chapters of the Great Charter which are now in legal existence are the 14th and 29th.

"The important provision of the 14th chapter runs thus:

"A freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great fault, after the greatness thereof, saving to him his contenement, and a merchant likewise, saving to him his merchandize, and any other villain than ours shall be likewise amerced, saving to him his wainage; and none of the amerciaments shall be assessed, but by the oath of honest and lawful men of the vicinage.

"By the usurped power of the judges, in assessing fines (and what fines!) in the cases of misdemeanor, this glorious right of the subject, of having these fines assessed by the jury (the only possible protection from slavery and the vilest oppression), is unjustly and infamously ravished from us.

"The provision of the 29th chapter runs thus:

"No freeman shall be taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed, nor we will not pass upon him, nor condemn him, but by the lawful judgment of his peers, or by the law of the land, we will sell no man, we will not deny or defer to any man, either justice or right.

"The various methods now in constant practice by which the benefits of this provision are totally defeated and destroyed, might induce us to suppose that the Great Charter has been repealed; if we did not assuredly know that it is the fundamental basis of our constitution, which even the real representatives of the people (much less the miserable nominees of Helstone and Old Sarum) have not the right, nor (as we trust it will be found by experience) the power to repeal. Yet what do we find in practice? Unconstitutional and illegal informations *ex officio*, that is the arbitrary will of the king's attorney general, usurping the office of the accusing jury; and the interested will of a vile common informer, with the judgment of as vile a common trading or pensioned justice, substituted in the room of our birthright, an impartial trial by our country. Add to this, that the exorbitant expense of judicial proceedings, the novel practice of arbitrarily and repeatedly annulling the verdicts of juries, and the dilatory practice of the courts, most openly and shamefully contradict the clause which forbids the denial, the delay, and the sale of justice.

"A man accused of felony (for which by the common law of England, his life and goods are forfeited) may be bailed on finding two sureties for forty pounds each; but upon a charge of misdemeanor by words only, bail to the amount of one thousand pounds has been demanded.

"Upon conviction also for such misdemeanor enormous fines, long and cruel imprisonments, unknown to our ancient laws, and unsanctioned by any new statutes, have of late (and but of late), been too frequently and too oppressively inflicted; and all this, although by the Bill of Rights it is declared, that excessive bail shall not be demanded, nor cruel and unusual punishments inflicted.

"If we look to Ireland, we find that acknowledged privilege of the people to meet for the support and protection of their rights and liberties, is attempted by terror to be taken away by a late infamous act of parliament; whilst titles of honour,—no, but of dishonour are lavished; and new sources of corruption opened, to gratify the greedy prostitution of those who are the instruments of this oppression.

"In Scotland, the wicked hand of power has been impudently exerted, without even the wretched formality of an act of parliament; magistrates have forcibly intruded into the peaceful and lawful meetings of free men, and by force (not only without law, but against law) have under colour of the magisterial office, interrupted their deliberations, and prevented their association.

"The wisdom and good conduct of the British Convention at Edinburgh, has been such as to defy their bitterest enemies to name the law which they have broken; notwithstanding which their papers have been seized, and made use of as evidence against them: and many virtuous and meritorious individuals have been, as cruelly, as unjustly, for their virtuous actions, disgraced and destroyed by infamous and illegal sentences of transportation, and these unjust and wicked judgments have been executed, with a rancour and malignity never before known in this land, and our respectable and beloved fellow citizens have been cast fettered into dungeons, amongst felons in the hulks, to which they were sentenced.

"Citizens; We all approve the sentiments, and are daily repeating the words for which these our respectable and valuable brethren are thus unjustly and inhumanly suffering.—We too associate in order to obtain a fair

free, and full representation of the people in a house of real national representatives. Are we also willing to be treated as felons for claiming this our inherent right, which we are determined never to forego, but with our lives; and which none but thieves and traitors can wish to withhold from us? Consider it is one and the same corrupt and corrupting influence which at this time domineers in Ireland, Scotland, and England; can you believe that those who send virtuous Irishmen and Scotchmen fettered with felons to Botany Bay, do not meditate, and will not attempt to seize the first moment to send us after them? or if we had not just cause to apprehend the same inhuman treatment, if instead of the most imminent danger, we were in perfect safety from it, should we not disdain to enjoy any liberty or privilege whatsoever, in which our honest Irish and Scotch brethren did not equally, and as fully participate with us? Their cause then, and ours is the same; and it is both our duty and our interest, to stand or fall together. The Irish parliament, and the Scotch judges actuated by the same English influence, have brought us directly to the point. There is no farther step beyond that which they have taken; we are at issue. We must now choose at once, either liberty or slavery, for ourselves and our posterity.—Will you wait till barracks are erected in every village, and till subsidized Hessians and Hanoverians are upon us?

"You may ask perhaps by what means shall we seek redress?

"We answer, that men in a state of civilized society are bound to seek redress of grievances from the laws, as long as any redress can be obtained by the laws. But our common master whom we serve (whose law is a law of liberty, and whose service is perfect freedom) has taught us not to expect to gather grapes from thorns, or figs from thistles. We must have redress from our own laws, and not from the laws of our plunderers, enemies, and oppressors.

"There is no redress for a nation circumstanced as we are, but in a fair, free, and full representation of the people. Resolved, that during the ensuing session of parliament the general committee of this society, do meet daily for the purpose of watching the proceedings of the parliament, and of the administration of the government of this country; and that upon the first introduction of any bill or motion inimical to the liberties of the people, such as, for landing foreign troops in Great Britain or Ireland, for suspending the Habeas Corpus act, for proclaiming martial law, or for preventing the people from meeting in societies for constitutional information, or any other innovation of a similar nature, that in any of those emergencies, the general committee shall issue summonses to the delegates of such division, and also to the secretaries of the different societies, affiliated and corresponding with this society, forthwith to call a general convention of the people to be held at such place and in such a manner as shall be specified in the summons, for the purpose of taking such measures into their consideration.

"Resolved, that the preceding address and resolutions be signed by the chairman, and printed and published.

"J. MARTIN, Chairman.

"T. HARDY, Secretary"

Mr. *Hamilton*.—You said you took notes upon some of these occasions?—Yes, I did.

Is it usually allowed to do so?—No, it is not. I have occasionally gone and put them down in a coffee-house.

What was the occasion of your taking notes?—I was introduced into the society; when I went away I made these memorandums.

Did you communicate them immediately?—Not immediately. I was sent for to the secretary's of state.

Did you ever take any notes of any thing in any other meeting?—Not in convivial meetings. I conceived in such meetings there was not such necessity.

Did you think any thing important enough for your taking those notes?—I did. I thought the intent was a parliamentary reform, but it occurred to me they had very different objects.

Why did you remain in the society when you found their intention to do so?—I thought I should be ready, if called upon, to give notice of what they said concerning the representation in parliament.

Did you mean to quit the room when you found their objects not so bounded?—I did not, by any means, join in their sentiments and opinions.

But you went there?—I did.

Why?—I said before, partly for amusement, and partly inclination.

To whom did you communicate this afterwards?—I never did to any body, till called upon by a mandate from the secretary of state's orders.

Mr. *Anstruther*.—He was taken up by a secretary of state's privy council warrant.

Mr. *Hamilton*.—Have you been served with a writ of subpœna, to give your evidence here?—No. I did not receive a subpœna, I was instructed to come here.

Mr. *Hamilton*.—The Court will take notice, this witness is not here by any legal authority.

Mr. *Anstruther*.—What does that signify?—I produce my witnesses,—those who will come voluntarily, I take them, if they will not come so, I subpœna them if they are within the jurisdiction.—The judges know, every witness from England to Scotland must come voluntarily, there is no mode of compelling them.

Whom did you come with?—I came down with Mr. Gurnell.

Who is Mr. Gurnell?—He is a messenger.

Mr. Taylor, you say you took those minutes for your own information?—Yes.

Had you any other reason?—No.

But after you had been before the secretaries of state you took notes?—No I never attended them at all afterwards.

Mr. *Hamilton*—Had you any other motive in taking those notes?—None at all, but only to speak to the point; I had no interest in it but inclination.

Edward Gosling sworn.

Mr. *Dundas*—What is your profession?—I am clerk to Mr. Wickham.

Who is Mr. Wickham?—Mr. Wickham is a magistrate in London.

Were you present at the meeting of the London Corresponding Society at Chalk Farm in April last?—Yes, I was.

Did you hear any resolutions read there?—I did.

By whom?—A man, I was informed whose name was Richter.

Look at these, and see if they are the same you have heard read?—No, these are not the same.

Look at them.—These appear to be the same resolutions; I had a copy similar to this afterwards at one of those divisions.

Who gave you a copy?—I had it from that division from one Hillyard.

You attended those divisions afterwards?—I have, Sir.

What was the style of conversation generally at those divisions?—In general there was less said at the divisions than in private conversations, but on the night following the 14th of April it was the meeting at Chalk Farm? on Tuesday after I had attended one of the divisions—I heard it was their intention to arm in the same manner as they had done in Paris.

Repeat that again.—I understood that there was a convention to be called, and it was the design of the society to arm themselves for the purpose of protecting that assembly in the same manner the French Assembly have been protected by the people of Paris.

Cross-examined by Mr. *Hamilton*.

Where was it you heard these conversations?—At the house of Holt, who keeps a house in Northampton Street.

How many might be present?—I cannot tell exactly; there might be thirty, there was no such conversation as that at the general meeting of the division at Chalk Farm; it was the following day after the meeting of Chalk Farm.

It was a meeting in private, of two or three people?—No, it was a regular meeting of the eleventh division of the London Corresponding Society.

Were you served with any writ to give your evidence here?—[No answer.]—Have you been subpœnaed?—I did not receive any thing, I came down at the desire of the solicitor of the Treasury.

How long were you a member of this society?—I became a member the day after the meeting of Chalk Farm.

What was your intention of belonging to it?—It was on account of the curious language I heard held at Chalk Farm.

Were you not a member of that society before you were at Chalk Farm?—No, I have not.

How came you to be there?—I met with a friend of that society I knew, I dealt in books with him, and I was so taken with the discourse of the meeting, I intended some days before to be a member of the society.

Mr. *Erskine*.—Did he tell you they held constitutional language? You say, they held curious language, and you were so charmed, you intended to belong to the society?

Mr. *Hamilton*.—Was it your intention to go into the society, to see what they had to say?—I did not Sir.

When did you leave the society?—The term I paid was up at Midsummer. I did not attend their society afterwards.

Did you give information relative to the proceedings going on there?—I mentioned the circumstance to Mr. Wickham, as I thought it my duty.

How frequently have you been at those societies, and how often did you give information of what passed?—I cannot exactly say, I generally attended the divisions once a week.

You gave information of what took place?—Yes.

Did he prescribe any rule of conduct to you, how to act in future?—He did not say any thing particularly, whether I was to continue in it or not; he observed, so far, if there was any thing dangerous going forward, I was to communicate it to him if of a dangerous tendency. I should not have done it, if he had not desired me. I had not an idea when I first went there I should meet with any thing of that kind; I was informed I should meet with improvement, and there were books to be read, and I went there for the purpose of spending an hour or two of an evening.

Alexander Aitcheson sworn.

Were you a member of the British Convention?—Yes.

I believe you were secretary or sub-secretary?—I was assistant-secretary to Mr. Skirving.

Did you write the minutes of that convention?—A considerable part of them.

Will you look at that paper, Mr. Aitcheson, and tell me whether the bulk of it is your hand-writing?—The bulk of it is not my hand-writing, a great many pages of it are my hand-writing, part of it wrote by other people.

Did you ever see that paper before?—Yes, I saw it before in this court, or the justiciary court, and the British Convention.

Does that paper, as far as it is of your hand-writing, contain an account of what passed in the British Convention?—I certainly might

have made many mistakes in taking down by hearsay, but to the best of my knowledge, it contains the truth.

Who was the secretary?—Mr. William Skirving.

Did any body assist you in taking those minutes?—Yes, several people appointed by the convention.

Look through the minutes, and tell if you know any other person's hand-writing besides your own?—I do not recollect any other persons hands except Mr. George Ross.

Lately of the Gazetteer-office?—Yes.

Was Mr. Callender a member?—Yes.

Do you recollect any motion made by him?—I recollect several motions, but do not recollect any put down in the minutes.

Do you recollect any amendment made to these motions?—I remember well an amendment made on a motion of Callender's, which caused a good deal of difference of sentiment, and a great many different motions.

Do you remember that motion being submitted to a committee?—Yes.

Do you remember the members? was Sinclair one?—Yes, he was.

Look at that. What is that?—Mr. Sinclair's amendment of Callender's motion. Reads, "That the convention considering the calamitous consequences of any act of the legislature which may tend to deprive the whole or any part of the people of their undoubted right to meet either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature; and holding the same to be totally inconsistent with the first principles and safety of society; and also subversive of our known and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country, and shall continue to assemble and consider of the best means by which we can accomplish a real representation of the people and annual election until compelled to desist by superior force.

"And we further resolve, that the first notice given for the introduction of a convention bill, of a similar tendency to that passed in Ireland since the last session of their parliament; the suspension of the Habeas Corpus act, or the act for preventing wrongous imprisonment in North Britain, and against undue delays in trial, which will render all the laws for the protection of our lives and our liberties nugatory, and as some have avowed their intention of introducing a motion for the repeal of one of them, or in case of an invasion, or the admission of any foreign troops whatsoever into Great Britain or Ireland; all or any of those shall be a signal to the several delegates to repair to such places as the convention shall appoint, and seven members shall have power to declare the convention permanent.

"Resolved, that the delegates to any convention, meeting under any of those calamitous circumstances, shall immediately repair to the place of sitting, and there continue until their number be twenty-one and then proceed to business.

"The convention doth therefore resolve, that each delegate immediately on his return home, do convene his constituents and explain to them the necessity of electing a delegate or delegates, and of establishing a fund without delay against any of those emergencies, for his or their expenses; and that they do instruct the said delegate or delegates, to hold themselves ready to depart at an hour's warning."

I do not recollect ever having read that paper before, I certainly have seen it, because my own hand-writing is on the back of it.

Mr. *Solicitor General*.—Do you recollect a resolution having passed of that purport in the convention?—Some amendment of Callender's motion did pass, but whether that is it I cannot say.

Do you know whether it was entered in the minutes of the convention?—I am not sure.

Whose hand-writing is that?—It is Mr. Ross's.

Reads, "Citizen Sinclair read the amendments upon citizen Callender's motion, as agreed upon by the committee, and it was agreed upon the motion of

That the house should resolve itself into a committee for its mature consideration. In the course of conversation, citizen Brown gave a history of the Habeas Corpus act; after an excellent discussion of the question, pertinent remarks and amendments, the convention was resumed, and the whole, as amended, was read over."

Then, all that appears from the minutes as they stand is—there is a resolution of all the members standing upon their legs, which resolution is blank?

Witness. The reason that page is left blank, is owing to my coming in at that very time; I remember the circumstance, it was left that I might fill it in, if not taken notice of by the other clerks, and therefore it does not appear in the minutes; that is the truth.

Mr. *Anstruther*.—That motion was handed to you as sub-secretary by citizen Sinclair, and you endorsed it upon the back?—I did.

Were you present when the provost of Edinburgh came into the British Convention?—Yes.

Did he disperse that convention?—Yes.

Where did you go to after that?—I was told that the convention went down to some place in the Canongate.

Where did you go?—I went home.

Where did the convention meet afterwards?—I was not present at the next meeting.

Do you know Mr. Watt the prisoner at the bar there?—Yes.

Were you ever in any committee with him?—I was appointed a member of the Committee of Union along with him.

When?—I think in the month of January last.

How long was that after the dispersion of the British Convention?—I think that dispersion happened the beginning of December, and the Committee of Union was appointed early in January.

Lord Advocate.—State that again.

Mr. Anstruther.—Was Watt a member of that committee?—Yes, I think he was.

You have seen him there?—Yes.

What was the business of that committee?—The business of that committee was, to preserve certainly an union among the Friends of Reform, and to correspond.

For what purposes did they meet?—I cannot say, for I gave very little attendance, and very little attention to the business.

Did the Friends of the People ever meet?—They met occasionally in some private societies.

Who sent you to the committee?—It was the chairman of the societies No. 1, and 2, of the Canongate division.

About what was the committee to correspond?—About the reform proposed by Mr. Pitt and the duke of Richmond; we never proposed going further.

Who were the delegates?—Mr. Watt was one, Archibald Wright another, and I had the misfortune to be the third; three of each society met.

Do you remember any one you ever saw there?—Yes, I have seen Mr. Bonthorn, and I have seen Mr. Downie, and I could hardly name you a third person out of the thirty.

Did you ever see Mr. Wright there?—I never saw Mr. Wright there.

Did you ever hear of a committee, called a Committee of Ways and Means?—Yes.

Were you a member of it?—Yes.

What was the purpose of that committee?—To raise money.

For what?—To pay our past debts.

Was that the only purpose?—Why, in case there were future emergencies and further demands to answer, the purpose of paying them too.

What were the demands to be?—It is extremely difficult to state what it was. I never attended it but once.

Was it for the purpose of paying delegates to the convention?—I have heard so at some occasional accidental meetings.

Where was the convention to be held?—Some where in England, that was the report of the day.

Were those meetings composed of the Friends of Liberty, not others?—Certainly, Sir.

Who are they you call the Friends of Liberty?—Why, it is difficult to ascertain who are the Friends of Liberty, a man may be so one day, and another day in another way.

Who were they?—All that professed to think as we did.

Was that the thing pointed out in the resolution you have just read? You have read the resolution of the committee just now, about a convention or meeting of emergency, about paying the expense of delegates, was that the convention?—I cannot say.

Was it the British Convention, or another?—It was another, but it was to be held as a British convention, that was the idea.

Was it for the same objects and purposes as the British Convention?—Certainly so.

Mr. Downie was a member of the British Convention?—Yes.

Mr. Bonthorn?—Yes.

Are you sure of it?—I only believe he was. I am not certain.

Did you ever hear where this convention was to meet?—No, somewhere in England.

And it was for the same purposes as the British Convention met last year?—The same purpose as William Pitt and the duke of Richmond had before.

Was it or not for the same objects as the British Convention?—The British Convention had the same object in view Pitt and the duke of Richmond had twelve years ago, and they meant if ever they met, to follow no other plan.

I want to know whether you have ever heard any conversation about arms?—Never in any of these committees.

Did you ever hear any elsewhere?—Yes, I have in occasional accidental meetings out of doors, among people not connected with the British Convention or those committees.

What were the conversations, and with whom?—I cannot condescend upon a single individual, I had conversation with so many.

Can you swear that?—I certainly can swear that I have heard it spoke a dozen years ago, when Pitt's reform was first spoke of. I have heard it said no such thing could be done without a convulsion, and without arms.

Did you ever hear it six months ago, or nine months?—No, neither eight or nine.

Did you ever see a pike?—I have seen a pike in George Ross's house.

Did not a Committee of Union meet there?—It was not in their hearing nor any of the members.

Did you ever see a pike in George Ross's house?—Yes.

Did you ever see more than one?—Two.

When was that?—On a Saturday evening, in possession of half a dozen blacksmiths, whose names I do not know.—George Ross was not present.

What sort of pikes were they?—They were something like the head of a halbert.

Now, did the Committee of Union meet at George Ross's?—No.

Did the committee of Ways and Means meet at George Ross's?—Yes.

Now, I ask you, whether you ever heard

any conversation about pikes manufacturing in Edinburgh, for the purpose of arming the Friends of the People?—I have heard it out of doors, perhaps at the Cross.

Did you ever hear such conversation any whese else?—Upon my great oath, I cannot say who spoke it.

Did you ever hear such conversation?—I have.

For what purposes were they to arm?—There were various purposes mentioned.

What were they?—I remember, when earl Stanhope mentioned, in his speech in the House of Peers, it was the duty of the people to have arms, he urged it, as a duty incumbent upon Britons, to be armed, to defend themselves in case liberty was to be attacked.

For what purpose were they to have arms?—Very different purposes.—I have heard some say, they would take up arms against the French, as well as Hanoverians or Hessians. In all mixed bodies there are people of different opinions.

Mr. Hamilton.—My lord president, I shall trouble your lordship with but one observation, I do it with a view of making this proof as short as it possibly can be, and just submit to your lordship's opinion, that all this man has been saying about arms, is nothing to the purpose; for what is it?—It is merely rumour, he talks of some proposal, but does he say it is about a rising of any body or set of men? It is improper to bring forward such evidence to substantiate any one charge in the indictment, or to prove the overt acts. It proves arms were provided to be put into divers peoples hands, but is it proved that this gentleman attempted to put them into any one's hands? this witness says, he has heard this only from people of no description whatever. It is not, therefore, such evidence as can be brought forward to substantiate the fact.

Mr. Anstruther.—I shall examine him as to any conversation among the Friends of the People, with respect to arms; whether I shall bring that home to the prisoner is another question, but I must be permitted to go on with my examination, in order to make it evidence, if it can be made evidence.

Mr. Hamilton.—Such kind of conversation as this man heard is not evidence.

Court.—Does Mr. Hamilton mean to object to the competency? aye or no.

Mr. Hamilton.—I object to the competency.

Lord President.—The answer to the question may be very insignificant; I shall think it my duty to say so to the jury, if it be such as Mr. Hamilton has described it, nothing more than report; but still the question may be put.

Mr. Anstruther.—The objection goes to the effect of the evidence; at present, I have not made any thing of arming against Mr. Watt; I will, if I am allowed to go on.

Court.—Go on with your examination.

Mr. Anstruther. To Mr. Aitcheson.—You will recollect you are upon your oath, and you know the consequences of being so. I therefore desire you would distinctly and explicitly answer the questions that are put to you. I asked you before, whether you had ever heard, among the Friends of the People, any conversations about arms; you have told me, there were different opinions upon the subject; and told me, one set said they would as readily arm against a Frenchman if he came here, as against Hessians or Hanoverians; I want to know what the others said.

The opinion of others was, that we should arm in favour of liberty, but we never came to a specific resolution upon that subject.—I beg pardon.—I think it hard, that I, who was not allowed to give opinions upon the former processes, should now be obliged to give them, when the opinions are stated for facts; you ask the people for opinions over a pot of porter or glass of whisky, to criminate people. I never spoke upon the subject to these two prisoners.

Lord President.—That is not the question; the question is, whether you heard, in any of these meetings, any thing said of reasons for putting arms in the hands of the Friends of the People, and what they were; you have been giving an account of different reasons, and one reason you assigned, as given by some persons, was, that they might be used in support of liberty.

Certainly, that I have declared.

Mr. Anstruther.—You recollect, when I am asking what another man said, I am speaking to a fact.—I ask who were the persons you had that conversation with?—As I am to answer at the great day, I cannot answer to any single individual.

Were there many of them?—Not above five or six, at the time of the accidental meetings.

How often did these conversations happen?—I cannot say.

Did they happen more than once or twice?—The public news of the day, the prosecutions against the parties; every thing brought the conversation on the board.—If a man is known to be attached to freedom at all, he is asked his opinion.

Were you ever present at the meeting of the Sub-committee, or Committee of Ways and Means, with Mr. Watt?—Never but once.

Now, upon your oath, what was the conversation then held in that committee?—Upon the oath, as I shall answer to God at the great day, I cannot tell a word of it, it was merely preliminary.

What do you mean by preliminary?—Just talking over a pot of porter; we must meet this day week; we must do something.

What was it you were to do?—I cannot tell you, this was in company with seven people, of whom I was one. I never met with them again.

Lord Advocate.—About what time of the

year was this only meeting you had with Watt?—When the committees were first appointed,

About what period was that?—About the beginning of January?

Mr. *Anstruther*. — Were you never at a meeting of the Sub-committee, but at the beginning of January?—To the best of my knowledge and belief, I never was.

Had you any conversation with the members of that committee respecting the business that was to come before them?—Not that I recollect.

You had better recollect yourself?—No.

Were you ever in Mr. Watt's house?—Yes.

Had you ever any conversation with Watt in his house?—Yes.

Was it before or after the meeting of that committee?—I cannot say.

What conversation was it you had with Mr. Watt?—Upon the news of the day.

What was the news of the day?—I cannot recollect; is a man obliged to recollect an accidental conversation over a dish of tea a year after?

Do you recollect or not recollect?—I do not recollect.

And you say so upon your great oath?—I certainly do.

Was any thing said about arming?—I believe that was about the time lord Stanhope's speech was made in the House of Peers.

Lord Chief Baron.—I wish you to say nothing against the prisoner that is not founded in fact, but, sir, if it be founded in fact you are called upon, and you are now in the presence of God, to answer the truth, let the consequence be what it may. I ask you to the best of your memory had you any conversation with the prisoner about preparing arms, or any thing to that purpose when you were with him?—My lord, neither your lordship nor any person in this court need inform me of the nature of an oath; I am not an atheist, not one of French principles. I know we shall all stand up at the great day of God, and this oath warns me to beware of saying what is not the truth, and whether it hurts me or the prisoner at the bar, I shall speak the truth; if you will take the trouble to repeat the question, I will answer it.

Lord Chief Baron.—Do you remember when you were with the prisoner having any conversation with him about preparing arms or using arms? if you recollect any thing, however trivial it may be, you are bound to speak it out.—I can recollect none, not a single circumstance, but that Mr. Watt said something of importance would soon be upon the carpet.

Nothing mentioned about arms?—No, only about lord Stanhope's speech, and the news of the day.

Did you see any arms, any pikes, or any things of that sort in his house?—I never did.

Did he mention any thing of any pikes being in his possession?—He never did.

Mr. *Anstruther*.—You have told the Court and me that you have had conversation with Mr. Watt upon the news of the day; it is impossible for me or the Court to know what that conversation was, if you will not describe the purport of it; but tell me what conversation you had with Mr. Watt upon the occasion?

Witness.—It is a very strange question.

What was the news of the day?—It was lord Stanhope's speech in the House of Lords.

What was said about it?—That certainly lord Stanhope had stood up for the rights of Britons, which had been too much infringed upon.

What more?—I cannot recollect.

Upon what occasion was it that Watt said something of importance was upon the carpet?—It is very extraordinary that such a tea-table discourse should come in question.

Did he mention the carpet, that something of importance was upon the carpet?—Or words to that purpose, is it possible for a man to remember every word? I have told you the word carpet, but that perhaps was not used by Mr. Watt.

Before whom was it to be brought upon the carpet?—Before the public, before the world certainly.

Who was to bring it before the world?—I cannot answer.

Lord President.—The words I took down are, that Watt said something of importance would soon be upon the carpet, or words to that effect; did you say so?—Yes.

Mr. *Anstruther*.—I think you absented yourself from the meeting of the committee?—Yes.

I want to know what was your reason for it?—Here again my opinion is asked; put your question again.

You absented yourself from the meetings of the committee, I want to know your reason for absenting yourself from that committee.

Lord President.—The question is, what reason was there for you to leave it?—Is it necessary, upon a trial for life and death, to state it?

Mr. *Anstruther*.—State the reason for your leaving that committee.—I heard, in seven or eight days afterwards, there was to be something important done, or acted upon publicly. I heard there was to be secret business before the committee, and from that day forward I never attended the committee.

You heard from Mr. Watt, that important business was soon to be upon the carpet, and you heard a report out of doors, that some important secret business was to be before the committee?—I heard that, and the conversation I had with Mr. Watt was three months afterwards.

With whom had you the conversation about the secret business, that was to come before the committee?—I could not tell you if my life were depending upon it.

Do you swear that?—I do.

You swear that you do not know the persons from whom you heard that secret business was to come before the committee?—I solemnly swear that.

Did you ever ask any of the members of the committee whether that was true or not?—I never did. I have already assigned my reason; I wished, whatever concern I had with public reform, it should be open and fair, and not secret business.

How did you know there was to be secret business, if not informed by the members of it?—I took it for granted.

Court.—Did you ask Mr. Watt what that business of importance was?—No.

Did you understand it from him?—I did not.

Lord President.—You said first that some secret business was to be before the committee, and then said you heard it out of doors?—Yes.

I think you said afterwards you heard it from one of the committee?—No.

Mr. *Anstruther.*—Then I desire you to answer me upon oath, and take care of the answer you give this question, whether you have not given a different account of your conversation with Watt, and your reason for leaving the committee, from what you have now given?—I cannot recollect, but this is the solemn truth I declare upon oath.

Answer me this question: Do you swear you never gave a different account of this conversation at another place?—To the best of my recollection I did not, and consistent with truth I could not, because it is not true; if I was to be guillotined for it I will stand by that.

Mr. *Erskine.*—In arguing every branch of this cause, we must feel ourselves under very great difficulties, because we are on the instant obliged to resort to a law, of which, till this prosecution, we knew nothing. The question put by Mr. Anstruther is undoubtedly not competent by the law of Scotland; and accordingly we are told every day, in the court of justiciary, if we attempt to shake the testimony of a witness, by showing a discrepancy on former occasions, that such questions are not pertinent to the issue, as he has bound himself by his solemn oath to speak the truth. My acquaintance with the law of England has been short and imperfect, but I am satisfied it concurs with ours.

Mr. *Anstruther.*—I understand Mr. Erskine's objections to be grounded on the law of Scotland, by which I understand a witness has a right to have his examination before the magistrate destroyed before he gives his evidence. By the law of England he has no such right; he may be indicted for perjury upon it, and I have a right to make use of every information I can gain from it.

Lord President.—I certainly was under a difficulty with respect to this matter; for judging by our own practice, I should have conceived it to be as Mr. Erskine has stated it. I believe the practice in England to be different in this particular; but I wish the king's counsel to consider, whether it would not be right to abstain from questions which are exceptionable according to our ideas?

Mr. *Anstruther.*—I have stated what I take to be the law of England, but shall implicitly follow your lordship's wishes upon the subject. I must say, this witness has given his evidence in a manner that does not entitle him to much attention from the jury.

Mr. Baron *Norton.*—In general, no witness is attempted to be discredited by his own counsel.

Mr. *Anstruther.*—I thought it necessary to bring him to this point, that the jury might see exactly the character of the witness.

Mr. *Hamilton.*—I submit it is not competent for Mr. Anstruther to speak upon this matter now; the lord advocate will sum up the evidence upon the part of the crown, but now he is anticipating a part of the charge, and stating that the witness is not to be attended to.

Court.—If you can say he has given any thing favourable to you, you may have the benefit of it; but, says Mr. Anstruther, I have brought him forward to prove my indictment, but from the manner he gives his evidence, I place little reliance upon him.

Mr. *Anstruther.*—The counsel for the prisoner are entitled to make any use they think proper of the evidence of this witness, but I shall not desire the jury to pay much attention to any thing he has said, unless he is confirmed by other witnesses. We shall now read part of the minutes of the British Convention.

Lord Advocate.—It might save the Court and jury some time, if it was reserved for me to quote from the minutes of the British Convention, those parts which appear to me to establish a charge, as I am to speak last.

Court.—If you are to speak last, and do not now tell the jury what you mean to lay hold of, you have an advantage; you have proved these minutes to be the minutes of the convention, and you ought to read them.

[The clerk of the Arraigns read the paper.]

1st Day's Sitting, 19th Nov. 1793.

Mr. *Dundas.*—There was a previous meeting before. Look farther, you will see Mr. Margarot moved, "That previous to publishing an address to the public, a committee be forthwith appointed to consider the means, and draw up the outlines of a plan of general union and co-operation between the two nations, in their constitutional pursuit of a thorough parliamentary reform, which was unanimously agreed to."

George Ross sworn, examined by the *Lord Advocate.*

Look at those papers; do you see your hand-writing there?—There is part of mine

here; this is my hand-writing, dated 28th Nov. 1793; some parts are mine.

[Part of that paper read as follows:]

"Citizen Sinclair read the amendments upon citizen Callender's motion, as agreed upon by the committee, and it was agreed upon the motion of citizen , that the house resolve itself into a committee for its mature consideration. In the course of the conversation, citizen Brown gave a history of the Habeas Corpus act. After an excellent discussion of the question, pertinent remarks and amendments, the convention was resumed, and the whole, as amended, being read over, the members stood upon their feet, and solemnly and unanimously passed the resolution as follows:

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"Citizen Gerrald, in an energetic and animated address, expressed his happiness at the motion passed, and exposed the act of the Irish parliament, called a Convention Bill.

"And citizen Brown followed him in a manly speech, and proved the influence of the executive government over the parliament. Citizen Margarot read and proposed the following motion, viz. That a secret committee of three and the secretary be appointed, to determine the place where such convention of emergency shall meet; that such place shall remain a secret with them and with the secretary of this convention, and that each delegate shall, at the breaking up of the present session, be entrusted with a sealed letter, containing the name of the place of meeting. This letter shall be delivered unopened to his constituents, the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state until the period shall arrive at which it shall be deemed necessary for the delegate to set off. This motion was seconded by citizen Moffatt, and the same was passed unanimously.

"The following citizens were nominated, with the secretary, a Secret Committee on this business, viz. Margarot, John Clark, and Brown; and they were requested to devise the best possible means of conveying this intimation to those societies whose views were the same with our's, but may not have delegates at this convention."

Lord Advocate.—Do you know the prisoner at the bar?—Yes, sir.

When and where did you know him?—It is not long since. I am not intimately acquainted with him. I have seen him sometimes in my house.

At what particular period did you first see him in your own house?—I think about the beginning of this year, or the end of last year.

Pray, sir, do you know any thing of a committee of the Friends of the People, who were represented in the British Convention, meeting in your house after the dispersion of that convention?—Yes; I understood a committee of the Friends of the People met in my house.

About what period?—About the period I mentioned before.

Does it consist with your knowledge that Watt was a member of that committee?—I have heard that Mr. Watt was a member of that committee, and seen him meet with other people at my house, but I never was present at any society who made choice of him, and never was present at the committee myself.

Do you remember any others that met at the same time with Mr. Watt?—Yes.

Give their names.—Mr. Orrock, Mr. M'Ewan, and Mr. Downie.

Where does Orrock live?—At the Water of Leith.

What is M'Ewan?—[No answer].

Have you seen them together?—To the best of my knowledge, they did meet together. Do you know what the name of that committee was?—I understood it was a Committee of the Friends of the People, I never knew any other name.

Did you ever hear any other name mentioned?—I cannot say; it had some particular name, whether it was this or not, I do not know; it was called a committee of union, this I heard of at that time.

When those persons assembled at your house, did they go into an apartment by themselves?—They did.

Did you ever hear or know of any inferior or subordinate committee meeting at your house, other than the Committee of Union?—I cannot say whether there were one or two committees,—as far as I recollect, I thought there were two,—they met at my house, as if there were two, or that part of them belonged to each.

If there were two committees, were they composed of the same condition of persons or societies, or were they the same individual persons?—I mean the same persons.

You must explain it.—A part of those who composed one committee composed the other.

Were the whole of those persons members of both committees?—I am not certain whether they were two committees or not,—but I know there was fewer of them met at one time, and a greater number at another.

You say they began to assemble about the beginning of the year at your house.—How long, and how often did they continue to do so thereafter?—Sometimes they met once a week, and sometimes not.

When did they discontinue their meetings ultimately and finally?—I do not know,—I left Edinburgh myself, some time ago, and before that there had been a meeting.

Had Watt been apprehended before you left Edinburgh?—Yes.

Downie the same?—Yes.

Had M'Ewan?—I cannot say.

Did those men continue to meet, from the

beginning of the year, till the arrest of Downie and Watt?—Yes. As far as I can recollect, there were meetings previous to their arrest.

A short time before?—Yes. I think there were.

Now, sir, you were a member of the British Convention?—Yes, sir.

Were all or any of those you saw at your house at that time, members of that convention?—I do not think Watt was.

Was Downie?—Yes, I think he was.

Was M'Ewan?—Yes, I think he was.

Do you recollect the names of any other persons who appeared to be members of the convention, who attended your house at the same time Downie did?—Yes, I believe one Bonthorne.

What is he?—I believe a teacher.

Any other person?—I am not sure whether Mr. Aitcheson was not one of them.

Do you know a person of the name of Stock?—Yes.

Did he attend the above meetings in your house, much about the time that Watt, Downie, Bonthorne, Orrock and M'Ewan attended?—Yes. I have seen him twice or thrice there.

After the dispersion of the British Convention, does it come within your knowledge, that the societies of this city, who sent delegates to that convention, continued to meet? I believe two societies did.

Who were they?—One on the south side of the town, and the other at my house.

Do you know a place called Symon's-square, on the south side of the town?—Yes, it was there the society met.

Were you ever present at any of their meetings?—Yes. As the society which met at my house gave up, very few having come to it.

Did they continue to meet there, while the trials of Gerrald, Skirving, and Margarot were pending?—I cannot answer the question put in that way.

From the time Skirving was tried, to the 10th of March, when Gerrald was tried, did the Symon-square society continue to meet?—I cannot say.

Upon those occasions when you were there, what numbers met?—The room might be full,—it was a small room.

What number might be there?—I dare say, when very crowded, there might be, perhaps, sixty or seventy people.

Do you know a person of the name of Hardy, in London?—I have wrote to him.—I do not know him, I have wrote to him once.

When?—I believe it might be about the end of last year, or beginning of this.

Pray, sir, did Mr. Hardy ever transmit to you, since the beginning of this year, any package, papers, or letters which he desired you to circulate?—No, he never did.

Did you ever receive any letters or papers of that description, with the signature of Hardy to them?—Yes. I recollect some printed letters signed T. Hardy.

What time of the year did you get these?—I suppose about February, or March, or April.

How did you receive them, and from whom?—If I recollect properly I think it was Mr. Stock gave them me.

What did you do with these letters?—I sent some of them into the country, as the letter seemed to indicate its purpose.

How many might there be?—About half a dozen I sent in that manner.

To whom did you think it your duty, and did you actually send them?—I sent them to the members of the different societies of the Friends of the People in the country.

Do you recollect any town or particular person in that town, to whom you sent that letter?—I sent one to Perth, one to Paisley, one to Strathaven, and I think one to Dundee.

Do you recollect to what particular person you addressed that letter to Perth?—I am not very certain whether it was to Sandilands or to Walter Miller at Perth. [He was shown the printed letters here and interrogated about the hand-writing on the inside of it, before he was asked about the direction on the back.]

Whose hand-writing is it upon the back?—It is mine also.

Do you believe that to be one of those received from Stock?—I suppose I received it among the rest.

You say you sent one to Paisley, do you recollect whom you sent it to?—I do not.

Do you recollect to whom you sent it at Strathaven.—To James Wilson, I think.

And you sent it by post?—Yes, I suppose I did.

You did not send a private hand with them?—No.

Do you recollect to whom you addressed one to Dundee?—I do not.

Do you recollect any other towns you sent that paper to?—I do not recollect at present.

Do you know a man of the name of Fairley, a cabinet maker?—Yes.

Was he a member of that committee?—I am not certain if he was.

Do you know or did you ever hear in any conversation among the Friends of the People, or those societies, of an intention of arming about that time?—No, I did not.

Had you any occasion ever to see any arms in the hands of the prisoner, or any other member of the societies?—No, I did not.

Mr. *Anstruther*.—We shall read the letter, and another letter found in the possession of Hardy.

Cross-examined by Mr. *Erskine*.

Have you not said Watt was not a member of the British Convention?—No, sir.

You talked of two societies, one at your house the other at Symon's-square, was he a member of either?—I do not know that he was.

The British Convention began in October I believe?—About November.

When was it dispersed?—It was about the beginning of the last year.

Do you know whether all their proceedings were inserted regularly in the papers?—They did appear in the public papers.

Just so, and there was no other public intimation given of any of the proceedings of any of them?—No.

[Letter read.]

"Fellow citizens; The society in Strathaven received your circular letter some time ago, respecting another British Convention to be held in England, and finding it would be inconvenient for them to send a delegate for themselves alone, the cause being much suppressed here by prosecutions, which we are subject to from the petty sheriffs in our neighbourhood, we have united ourselves with the societies in Kilmarnoch, Galston, Newmilns, and Dervill; accordingly a meeting of delegates from these societies, and that in Strathaven was convened on the first current, when the measures met with the fullest approbation, and a delegate was elected for the general convention, and a secret committee appointed to conduct the business; you will therefore forward your orders to us, when and where the convention is to meet, with any other instructions or information you may judge necessary; we shall instruct our delegate respecting the number and strength of our societies, and are happy to fraternize with you in any thing that may tend to promote the general good.—We remain yours,

"ALEX. MITCHELL, Sec.

"In the cause of Liberty for the United Societies as above.

"Dated Strathaven, 9th April 1794."

Mr. *Anstruther*.—We will read the other paper to which this was the answer.

Lord Advocate.—It is the same gentleman produces it, Lauzun. It was found in the possession of Hardy.

Mr. *Erskine*.—It is needless to read it.

[Here Hardy's circular letter was read.]

Mr. *Lauzun* called.

Did you find a paper among Hardy's papers signed Alexander Mitchell—of what date is it?—No sir, one Mr. Gurnall found it.

Mr. *James Gurnall* sworn.

What are you?—A king's messenger.

Look at those two papers lying before you, marked with your name, tell me where you got them?—I got this paper in Mr. Hardy's house.

Look at the other.—This I got there also.

Alexander Mitchell sworn.

Mr. *Anstruther*.—Mr. Mitchell, is that your hand-writing?—I could not positively say sir, I am persuaded it is.

Mr. Mitchell, what business are you?—A manufacturer in Strathaven.

What letter was it written in answer to?—It was written in answer to a circular letter received by post.

Was that a written or a printed letter?—It was a printed letter.

Look at that letter and say whether it is like it? is it like that letter?—Yes; I believe it was similar.

In answer to such a letter as that you wrote this letter?—Yes, sir.

Do you recollect the name of the person affixed to that printed letter?—It was Hardy.

In consequence of that letter, was there a meeting of the society at Strathaven?—Yes, there was, sir.

Did you and the other societies in that neighbourhood choose a delegate?—There was a general meeting held, and it was agreed upon at that meeting to choose a delegate.

A delegate to what?—To what was termed a British convention.

In consequence of that letter, you chose a delegate to another British convention from the societies in your neighbourhood?—

Mr Baron *Norton*.—I do not think the witness is bound to say any thing to criminate himself.

Witness.—My lord, I cannot conceive, wherein the present question has any direct relation to the object of my evidence, but I appeal to the judgment of the Court whether I shall answer or not.

Lord President.—You are in no danger at all, you have taken an oath to speak the truth, and you ought to do so.

Did you do any thing in consequence of that letter?—Yes I did.

You were secretary to the meeting, I think?—Yes.

You wrote that letter as secretary?—Yes, sir, directed to Mr. T. Hardy, shoemaker, No. 9. Piccadilly, London, for the London Corresponding Society. Direct to Alexander Mitchell, manufacturer, Strathaven, county of Lanark.

Mr. *Anstruther*.—From whom did you receive the printed letter?—I do not know; it came by post, I suppose; and it was not properly directed to me, it came to another. I was not secretary to the society of Strathaven, but to the meeting of the societies mentioned in the letter.

Mr. *Lockhart* sworn.

What are you?—The depute sheriff clerk.

Had you ever any occasion to search the house of Mr. Watt?—Yes.

Upon what occasion did you search the house?—It was upon occasion of searching for some goods of a bankrupt, that they said was secreted in Watt's house?

What did you find there?—I found a box of goods, and I found some pikes.

Where are those pikes?—There are twelve I found upon the first search.

Were did you find them?—In a locked press in one of Mr. Watt's rooms.

Had you ever occasion to make another search in Watt's house?—Yes, sir.

Upon what occasion?—I went down the same evening to see the windows secured, it was between twelve and one o'clock; I ordered a closet to be broke open.

After finding the first parcel, what did you do?—I took it away with me, and carried it to the sheriff, and showed what I had found, and there was a warrant for a further search.

Upon that further search, what did you find?—Two halbert-headed things, and more single pikes.

Where did you find them?—In a closet upon the second search.

This was about mid-night?—Between twelve and one.

What month was it?—Upon the 15th of May.

Did you try that pike and that stick?—I did, before I came out of the house.

What did you try it with?—I found this one first and tried that on it.

Put it on now.—It is a smaller one that screwed into the hole, and the large one went over it.

Show that to the gentlemen of the jury. [a complete small halbert.] Shew them how it fits the large one with the halbert head.—It screwed on in the same manner as the small one did.

[To Lockhart] Does the screw of that large one fit the screw of that other?—Yes.

What is that other thing?—I fancy it is meant as a dagger.

So that it would fit any other pike?—Yes.

You found these in Mr. Watt's house?—Yes Sir.

Where did you carry those pikes to from Mr. Watt's house?—To the sheriff clerk's office.

Did you find any thing else there?—There was a fount of types.

A fount of types?—They were entire at the time.

Were those types set when you found them?—Yes, they were.

How came they to be in the state they are?—I lifted them rather rashly the other day, when I went to exhibit them before the grand jury, and they broke down.

Lord President.—Are there any standing?—Yes.

Mr. *Anstruther.*—What did you do with those types when you found them?—They were lodged in the sheriff clerk's office.

What was done with those types when they were in the office?—I was not present at any thing done there with them.

Mr. *Anstruther.*—I will prove an impression taken of them.

William Middleton, sheriff's officer, sworn.

Mr. *Anstruther.*—Had you ever any occasion to search the house of a person of the name of Orrock?—Yes, I had in the evening of the 15th May last.

Under what warrant?—Under the sheriff's warrant. Robert Orrock, he is a smith at Dean. Before I went to Orrock's, I searched Watt's house.

What did you find?—I found in a closet in the under story of Watt's house a dozen of spears.

Was Lockhart with you?—Mr. William Lockhart was with me.

What did you find there?—There were twelve spears found in Watt's house on the first search, and upon the second search four others found, sixteen in all.

Are those the instruments?—Those are the identical instruments.

Did you ever find any thing else in Watt's house?—There were, in the presence of the sheriff and Lockhart, a set of types found. I seriously believe these are the same, but they are not in the same situation as when found, they have been accidently broke down, they were set and entire when they were found.

Did you search the house of Orrock on the 15th May?—The smiddy of Orrock was searched, and I think there were fifteen of these; these are the instruments found in the smiddy of Orrock.

How many?—I think 33 unfinished in this state.

All halbert heads?—Those are part of them in the highest finished state.

Show them that are in the finished state, and those unfinished?—Here are those in the unfinished state, and the others more finished.

You found these in the house of Robert Orrock?—In the smiddy of Orrock.

Not in the house?—No, we found nothing there, but in the smiddy. He was brought to the sheriff clerk's office, along with those articles.

Had you ever occasion to search the house of Walter Miller?—I did not search there.

In what part did you find the types in the house of Watt?—In the upper story,—they were found by the sheriff himself, on a shelf in a closet in the upper story. I lodged the types in the sheriff's office, and carried them from Watt's house to it.

Mr. *Anstruther.*—Those found in Watt's were found in the press—those in Orrock's all in the smiddy?—Yes.

Were they in a concealed place in the smiddy?—These two were rather in a concealed way under the ashes upon the hearth in the smiddy, but the others were in a box in the back part of the smiddy, and did not seem to have any thing to cover or conceal them.

What became of those types after you carried them to the sheriff clerk's office?—I believe they were carried to the sheriff clerk's office, and remained there ever since for any thing I know.

Were you present when any impression was made of them?—No.

James Walker sworn.

What is your name?—James Walker.

Did you ever see a fount of types in the sheriff clerk's office?—Yes.

When?—I think it was in May about the 20th, some time after the 20th or 23d May I think, I could not say the day, but it was some time in May.

What are you by profession?—I am a writer in the sheriff clerk's office.

What became of that fount of types?—I do not know what became of them.

Did you see any impression taken off?—Yes, I saw a dozen impressions taken off.

In whose hands did you see that fount of types?—I saw it in the sheriff's hands, and if I recollect I carried it up to Campbell Denovan's printing office.

What distance is that?—Not far, it is just in the same close.

Is it as far as to the window there?—No, it is farther; we first go up the close a little, and then up a stair-case to the printing office.

Did you see the impressions taken off at that office?—Yes.

Look at this?—Yes, I saw this one.

Did you put your name to it?—Yes.

Did you put it at that time?—I put it when my declaration was taken.

Are you sure it is the paper you saw taken off?—Yes, I am certain it is.

James Clerk, esq. sheriff depute, sworn.

Mr. *Anstruther*.—Did you ever receive a fount of types in your office, Mr. Clerk?—I found a fount of types in Mr. Watt's house upon the evening of the 15th of May. Mr. Lockhart, the sheriff clerk depute, came with a pike to the office while I was there, which he said he had found in Watt's house, upon which I granted a warrant to apprehend Mr. Watt himself, and to search his house, which was accordingly done; and other pikes being found, were also brought to the office, where Mr. Watt was likewise brought for examination. After which the house was ordered to be secured 'till the next day; accordingly it was so, and next day I went with Mr. Lockhart, Middleton, and Watt's maid, to inspect his papers, and likewise to secure any thing else found in the house that might appear material. In the course of this search, and in an upper closet, whether upon a shelf or on the floor I do not recollect, we found a fount of types set up for printing; finding this in a house that was not a printer's led me to examine the fount of types, which I endeavoured to read. I could read Dundee, 12th April at that time, and a line something to this purport: "for that purpose alone you are inlisted," it was in words to that purport.

These were in capital letters?—Yes I could not read the small letters, I read the large letters.

State what you did with the fount?—There was a multiplicity of business going on, the fount and types were put in a place where I had the key, and afterwards I sent a lad, a young man that writes in the office, and a Mr. Wishart to Campbell Denovan's printing office in the same close, and desired them to throw off 12 copies; they did it in the course of a few minutes while I was there; and having returned the fount to me, I then locked up the types, and they were kept in my possession till sent to the grand jury.

Did you give the lad the fount of types exactly in the same state, in which you found it in Mr. Watt's house?—Exactly in the same state, and there were twelve copies taken from it, at that time.

Is that one of the copies? read it slow?—It is dated Dundee, April 12th, 1794.

Is it in printing or in writing?—It is in print.

"Friends and brethren—It is with the greatest pleasure that your countrymen are informed, that such is your attachment and love to them and to your native country, that you manfully and firmly resolve not to leave it upon any terms contrary to those upon which you were at first engaged.—Your countrymen love you, and their hearts would be as much wounded to part with you, as yours would be to be separated from them; they well know that they are safe under the protection of their fathers, their sons, their brothers in arms, and they neither wish nor desire any other defenders—they hope and believe that your heads are filled with the same sentiments.

"The great mass of the people from amongst whom you have been enlisted, have been represented to you, as your enemies—believe not the assertion, they have been taught to consider you as foes, but they do not fear finding friends amongst their brethren.

"Their cause and yours is the same—They are poor, but they have honest hearts; hearts which sympathize in your cause; they look for the same friendship and the same sympathy in you.

"They rejoice to hear, that you are becoming daily more convinced of the great truth, that the law ought to be the same to the highlander, and to the lowlander, to the rich, and to the poor, and no man can be compelled to take up arms, by any authority whatsoever, unless his own inclinations prompt him to do so.

"This truth has been hitherto carefully concealed from you, but it is not the less certain, the will of your laird cannot without your own consent, separate you from your families and friends, although many of you may have experienced the exertions of such a power, however unjust, and however contrary to law.

"We respect and admire that principle which induces you (though necessity has compelled you to take up arms) still to persist in remaining to defend your friends at home, and not to quit a country which holds pledges so dear.

"When you are gone, where is their defence? They may be either left without protection, or may soon see their country overrun by foreign troops, such as in time past have already shed the blood of your ancestors without provocation, and without remorse; and who would feel perhaps as little compunction in shedding yours.

"Prepared for every deed of horror, these foreign mercenaries may violate the chastity of your wives, your sisters, and your daughters, and when desire is satiated, cruelty may resume its place in their hearts, as experience has too well and too fatally shown, and friends, parents, children, brothers may be involved in one common slaughter.

"The cruel massacre of Glencoe cannot yet be forgotten; are there not amongst you, whose forefathers perished there? their hearts throbbing with kindness and hospitality were pierced with the daggers of their treacherous guests, and the feast, prepared by the hand of unsuspecting friendship, was closed with a scene of blood; such is the return for kindness and hospitality, such the protection which your families have to expect!

"How will they look around in vain for your protecting care, when perhaps you are fighting at a distance in a foreign land—But they hope you will not forsake them, stay, oh stay, and defend your families and your friends. For that purpose alone you were inlisted, they are ready to come forward for you in the vindication of your rights.

"Thousands join in the same sentiments with you, and ardently wish for your continuance among them—The circumstances which might require you to quit your country have not yet taken place—No invasion has yet happened, you cannot be compelled to go—leave not your country—assert your independence.—Your countrymen will look up to you as their protectors and guardians, and will in their turn lift up their arms to protect and assist you.

"*Dundee, April 12th*, 1794."

James Sommerville sworn.

Mr. *Anstruther*—What is your name?—James Sommerville.

What are you by profession?—A printer.

Did you ever take off any impressions from a fount of types at Campbell Denovan's printing office?—Yes.

Are you an apprentice of his?—Yes.

Lord Advocate.—Did you ever take impressions from a fount of types brought from the sheriff clerk's office?—Yes.

Who brought it to you?—I went to the sheriff's office for it.

Whom did you get it from?—From the sheriff and some other gentlemen.

Is that one?—Yes, we took several.

Is that one of them?—Yes.

Is that your hand-writing?—Yes.

William Watson sworn.

Lord Advocate.—Where do you reside?—In Dalkeith.

Do you know the prisoner at the bar?—Which is he?

That person that is standing up. Do you know that person?—No, I cannot positively say I know him.

Did you ever see him?—Yes, I once saw him at his own house, a person they called Watt.

Is that the person you saw?—I cannot say, I could not say upon my oath that is the person.

Had you ever occasion to see a man of the name of Watt?—Yes.

When and where did you see that person?—It was at his own door.

Where is his own door?—Why, it is in the north side of the street.

Is it in Edinburgh?—Yes.

Upon the north side of the street?—Yes.

Do you know the North Bridge?—Yes.

Is it above or below the North Bridge?—It was below the North Bridge.

Who sent you there?—Why, I went with Mr. Downie.

Who is Mr. Downie?—He is a jeweller and goldsmith in Edinburgh.

In what part of Edinburgh did Mr. Downie then reside?—I do not know, but I have heard it said he lived in the Parliament Square.

At what particular time was it you went with Downie, to the house of this Watt?—I could not remember the very particular time.

Was it not a year ago?—No, sir, it was not a year ago.

Was it six months ago?—I do not remember.

Was it in winter or summer?—It was in summer, some time in the beginning of summer.

Had you occasion to hear soon after that time of Watt and Downie being taken into custody?—Yes.

How long before that time was it?—I cannot positively say.

Was it a long time?—I do not remember.

How long is it since Watt and Downie were taken into custody?—I do not know.

Was it long after?—No.

Would it be a month after your visit to Watt, along with Downie?—I cannot positively say.

You reside at Dalkeith?—Yes.

Do you remember a fencible regiment quartered at Dalkeith?—Yes.

When was it?—I could not possibly say the time when they came.

Was it a year ago?—No, it was much about that time.

About the time the regiment of fencibles were in Dalkeith you went with Downie to Watt's house?—Much about that time

What regiment was that? Do you know by whom it was commanded?—It was lord Hopetoun's.

Where did you meet with Downie before you went into Watt's house?—I was in the Lawn Market, and I saw him go by a shop door where I then was and had heard of a paper.

Whose shop door?—It was Mr. Ritchie's.

What paper was it you heard of?—A handbill about the fencibles.

And Downie passed the shop door?—Yes.

What did you say to Downie?—I heard of the hand-bill, and I being curious to see it, went and asked Downie if he could satisfy my curiosity, and show me one.

The witness says, being in the shop of one Ritchie in the Lawn Market, about the time of lord Hopetoun's fencibles being at Dalkeith, he observed Downie pass the shop, and went to him in order that he might satisfy his curiosity?—Yes.

But Downie said he could not then?—Yes, but he possibly might if I would follow him.

Did Downie and you go to any place and where?—Yes, he said he was going down the street, and if I would go down with him he might possibly get it.

Where did he go with you?—He went to the place which he called Mr. Watt's house.

Now, sir, when you went to this man's house of the name of Watt, did you see that man?—Yes, I saw him, Mr. Downie went in, I followed him; it was just in the entry; whether Watt knew whether I got it or no, I do not know. Mr. Downie came down in a few minutes.

Did you see this Watt at that house?—Yes, I saw a man they called Mr. Watt.

Then, upon the great oath you have taken, say whether that is the man you saw, and I desire you to give an answer?—Upon the great oath I have taken, I could not positively say, it might be the man.

Is it like him?—I could not remember the features of the man.

What did you do after this, Downie and you?—Mr. Downie came down the South Bridge.

Were you present when Mr. Downie put any questions to this Mr. Watt?—I do not recollect what they said; he asked about the news of the day; or whether he asked Watt where he could get them, I cannot say.

Did you hear any discourse between Watt and Downie about the hand-bill? whether he asked Watt if he could furnish him or not with one?—I do not know; Mr. Watt went in and Downie followed him; when I went in Mr. Downie said he could not get them there.

I ask you, did you in this short space of time while you were with Downie, hear that man Watt open his lips or not?—I dare say he opened his lips.

You dare say!—did he or did he not?—Yes, I believe he did.

Then I ask what was the purport of what he said; did it relate to that hand-bill, the object of your visit to Mr. Watt?—Mr. Downie was coming away, and he asked Watt how he did, and then Mr. Downie asked me to come away with him.

You went into this man's house to whom you were a stranger, for the purpose of getting a hand-bill relative to the fencibles along with Downie, who said he would carry you to a place where you would be satisfied; what answer did Watt make to your question, or did he say any thing more after that preliminary question was put by Downie?—As it was a trivial question, I did not take any particular notice.

It is a trivial question, and therefore I ask you, was there any more important question put by Downie,—after Downie asked him how he did?—did he not ask Watt whether he could satisfy your curiosity?—I do not understand you.

Lord President.—Lord Advocate, you had better go on.

After you heard Downie ask this man, Watt, how he did, did Downie put any more important question to Mr. Watt?—No; I do not think he did.

Did he put any question at all to Mr. Watt farther?—No; I do not recollect that he did put any.

Did he leave him directly?—He came along with me, he was a little before me.

Lord President.—Did you ask Downie if he had got the hand-bill from Watt?—Yes, and he said he had not.

That was the import of your conversation?—Yes.

Was there any direction given to Downie in your hearing, as to the place where the hand-bill might be got, which you were in search of?—I did not hear any thing else, but Downie asked him how he did.

You came out with Downie?—Yes.

Where did you go to?—We went to a shop upon the South Bridge belonging to Kennedy, or in the management of him, his name is on the shop door.

Did you know Kennedy?—I never saw him before.

What conversation passed between you and Downie, and Kennedy?—Downie went into the back shop, I went in, and Mr. Kennedy gave me some of these things.

Pray were you a member of these clubs at Dalkeith?—Yes, I was.

Mr. *Anstruther.*—You went from Mr. Watt's to Kennedy's, and Mr. Kennedy gave you a parcel?—Yes.

How did he give it you?—He threw it down upon the floor and said, you had better take it up and say you found it, for fear any evil should accrue to any body from it.

Now what was in that parcel?—Why a kind of address to the fencibles not to go out of the country.

What did you do with it?—I gave it to several of my friends round me.

[An objection arose to his being asked such questions, as might criminate himself.]

Mr. *Anstruther.*—He need not answer any that may criminate himself; did you give them to a person of the name of Sommerville?—No, sir.

Did you give them to a person of the name of Johnston?

Mr. *Erskine.*—I conceive it to be of all

things the idlest and most superfluous, to recognise as a principle of law that a witness is not to answer a question that might criminate himself, without at the same time, warning him what might or not be a question, where the answer might criminate himself.

Mr. *Anstruther*.—Most unquestionably the witness is not bound to answer a question to criminate himself, and he is to judge for himself whether it does or not, and then he may answer if he pleases.

Mr. *Erskine*.—In the case of lord George Gordon a person was brought as a witness, and the question was put to him whether he was a Roman Catholic, and there was no objection to it from the person himself; but lord Kenyon and Mr. Erskine objected to the question, upon this ground, that if Mr. Hay * answered it, he would subject himself to penalties.

Mr. *Anstruther*.—Mr. Erskine forgets the question came from lord George's counsel, whether the person was a Roman Catholic or not; the witness asked whether he was bound to answer the question, the Court told him if the answer would subject him to penalties, he need not answer.

Mr. *Erskine*.—I care not from whom the question came; because whether from the crown or the prisoner, the principle is just the same.

Lord President.—I wish to know whether the lord Advocate means to prosecute this witness.

Lord Advocate.—With the exception of Downie and Stock, the persons against whom your lordships know bills of indictment are found; I do not mean to bring any prosecutions against other persons upon this account.

Mr. *Erskine*.—My lords, another lord advocate may be appointed to-morrow, and I should be glad to know whether another lord advocate, notwithstanding what the honourable gentleman has now said, would not be competent to prosecute any person he thought proper; lord chief justice Jefferies prohibited a question of the same sort, because it would subject the witness to penalties.

Mr. *Anstruther*.—It is impossible that it can be a rule of law, that a witness is prohibited from answering such questions; that would be to prevent an accomplice from giving evidence in any case; he is at liberty to give his evidence if he pleases.

Mr. *Dundas*.—The Court has given warning that he need not give any answer that may criminate himself.

Mr. *Erskine*.—A witness may answer the question, but he ought to be informed he need not answer it unless he pleases to criminate himself.

Mr. *Anstruther*.—Mr. Watson, I have told you that you are not bound to answer any question that criminates yourself; you have told me that you gave one of those papers to a person of the name of Johnston?—Yes.

Now, answer me, whether Mr. Watt ever told you, or told Downie, in your hearing, whether you would get these papers, where they were to be found; or whether he told Mr. Downie any thing about any papers in your hearing?—No. I do not recollect that he did.

But you went from Watt's house to Kennedy's shop, there what passed you mentioned?—Yes.

You got a parcel of them?—Yes.

Now, was there any other paper? Do you know a committee, called a Committee of Ways and Means?—No.

Were you a member of the convention?—Yes, I was.

Were you a secretary to the Friends of the People at Dalkeith?—I was secretary once.

William Johnston sworn.

Mr. *Anstruther*.—Do you know a person of the name of William Watson?—Yes.

Is he the man that was here just now?—Yes.

Did you see him in the next room?—Yes.

Did you ever receive a printed paper from him?—Yes.

What did you do with it?—I gave it to James Sandilands.

Do you remember what it related to in general?—I think it was an address to the Fencibles or something of that nature.

At what period of time was this?—I cannot tell the time; it was probably in the Spring of the year; I cannot recollect the time.

Was it about the time that lord Hopetoun's Fencibles were at Dalkeith?—Yes. I dare say it was.

Can you recollect where the paper was dated?—I think Dundee.

James Sandilands sworn.

Do you know a person of the name of William Johnston?—Yes, sir, I do.

Did you see him in the other room?—Yes, sir, I did.

Did you ever at any time receive any printed paper from him?—Yes; I did.

When?—I do not perfectly recollect the time.

About what time was it?—About the month of April or May.

Was it at the time the Fencibles went through Dalkeith?—Yes. It was about that time.

What sort of a paper was it?—I do not know. I never looked at the paper; we had some conversation about it.

What was the conversation between you about?—One William Johnston asked me if

* Neither this statement of Mr. Erskine nor that of Mr. Anstruther is correct. See the examination of Mr. Hay on the trial of lord George Gordon, *ante* Vol. 21, p. 519.

a serjeant would look at it; I gave it to serjeant Hardy.

You took it from the hand of Johnston?—Yes.

And you put it into the hand of serjeant Hardy?—Yes, I did.

Lord Advocate.—Hardy is a serjeant in lord Hopetoun's Fencibles?—Yes.

Serjeant *Hardy* sworn.

Do you know a person of the name of Sandilands?—Yes.

Did you ever receive from him any printed paper?—Yes.

What was it about?—It was a seditious paper, concerning the Fencibles not going out of Scotland.

What regiment do you belong to?—The earl of Hopetoun's.

You are a serjeant in it?—Yes.

About what time was it?—About the 10th of May.

Was your regiment in Dalkeith about that time?—Only part of the regiment were marching through it.

How long were you at Dalkeith?—Three days.

What day of the week do you recollect was it?—It was on Saturday I got the paper.

Was it in Dalkeith you got the paper?—It was on the street in Dalkeith.

Where was the regiment going at that time?—It was going to Liverpool.

Did the regiment go to Liverpool?—Only part went to Liverpool.

Did the part you went with go to Liverpool?—No. To Whitehaven: 105 went to Whitehaven; two hundred to Liverpool.

Is that the paper? look at it.—Yes; the very paper.

Do you recollect what conversation passed at the time you had that paper delivered to you?—State what passed at the time.—This gentleman, Sandilands, came to me, and bade me look at that paper; I asked him where he got it. He told me; but I do not recollect the man's name. I asked him, if he had any thing to do concerning that paper, or the people that put it out; he said no, he had not; there were meetings in towns, but he never attended any of them.

And he gave you that paper?—Yes.

Mr. *Anstruther.* Gentlemen, it is the same paper that has been read to you, which answers, verbatim, to the copy taken off the types, and the very identical paper which Hardy received from Watson.

[To Hardy.] Do you know of any other being distributed in your regiment?—No. I never saw any other but this I received myself.

Arthur M'Ewan sworn.—Examined by Mr. *Solicitor General.*

Pray, what is your occupation?—I was bred a weaver.

Where do you live?—At the Water of Leith.

Do you know if there is a society of the Friends of the People at the Water of Leith?—Yes.

Were you a member of that society?—Yes.

Do you know that they sent several delegates to the British Convention?—Yes. They sent several.

Were you a delegate?—Yes.

Did you attend the convention regularly?—Yes.

Did you attend them when they were dispersed?—Yes.

At what time?—At the end of November or beginning of December.

After this dispersion happened by the civil magistrate, did the Water of Leith Society continue to assemble as before?—Not so frequently.

But you assembled some times?—Yes.

Do you know the other societies assembled here?—I never went to any of them but that which I belonged to, I was elected by them to a committee.

What was the committee called?—A Committee of Union, by a printed paper; what it was formerly, I do not know.

You were a delegate from the society?—Yes.

Where did it meet, that Committee of Union?—At George Ross's.

What might be the number of the Committee of Union?—I do not know.

Might it be twenty or thirty?—I suppose it might be more than that.

Had they many meetings, this Committee of Union?—They had frequent meetings.

Did they form another committee of themselves?—Yes, they did.

How did you call that?—That committee was called a Sub-Committee.

Had it any other name?—It was after that called a Committee of Ways and Means.

Were they chosen by the Committee of Union, from their members?—Yes.

Were you one of the Committee of Ways and Means?—I was a member of the committee, but it was called a sub-committee.

But it got the name of a Committee of Ways and Means?—Yes.

What did you understand to be the object or purpose of this Committee of Ways and Means?—The object I understood was, two or three weeks before, that there was a letter read to that committee, intimating that a letter had been received from Mr. Skirving, wherein it appeared that the convention owed him a sum of money, and hoped they would pay him, as he was going to leave the land.

How many did the members of that committee consist of?—It consisted of seven.

Was Watt one?—Yes.

Whom else?—Mr. Aitcheson, Mr. Stock, Mr. Burke.

Was Bonthorne?—Mr. Bonthorne and myself.

Was Downie a member of it?—Yes, David Downie.

Had you many meetings of this Committee

of Ways and Means?—Yes, there were many meetings.

Where was it held, were you there at the first meeting?—I was.

What business passed at that meeting?—No business passed that night, but a letter brought by Alexander Aitcheson.

Do you recollect what it was about?—I think it was about the Gazetteer.

But nothing else happened at the first meeting?—No.

About what time was it?—About the tenth of March.

At which no material business was transacted?—No, no farther than I mentioned.

Were you at the second meeting of the committee of Ways and Means?—Yes.

Who attended at that meeting?—I think there was Mr. Burke, Mr. Stock, Mr. Watt, and Downie, Mr. Bonthorne and myself.

Was Aitcheson there?—No, he was not.

Jury.—Repeat the names of the committee; was Watt at the second meeting?—Yes.

Now, at this second meeting of the committee of Ways and Means, at which you were present, and Watt was present, was there any proposition or plan laid before the committee by Watt?—Not that night, there was nothing done that night, the second night, but a letter wrote of congratulation to Mr. Gerrald.

Then, who were present at the third meeting? tell first who were present at that third meeting?—At the third meeting, there were Mr. Watt, Mr. Downie, Mr. Bonthorne, Mr. Stock, and I.

The others were not present?—No.

Whether at this meeting was any proposal made by Watt or any plan laid before it by him?—My lords, as far as I can recollect, Mr. Watt produced a paper that night, which contained a plan to seize the lord justice clerk, the rest of the lords of session, and the lord provost; also, to have a number of men placed at the Weigh-house, and a number at the Lucken-booths; to put a fire at the Excise-office, to draw the military from the Castle, and when they came down, those placed at the Weigh-house, with the others at the Lucken-booths, were to enclose them, at the same time numbers were to seize the different banks of this town, and to appoint commissioners to go and demand the cash of them.

Counsel.—Gentlemen, I suppose, you have heard what he stated.

Jury.—Do you say this proposal was made by Watt?—I think it was in writing.

Did Watt take it out of his pocket?—Yes, he did.

Did he read it?—Yes, he did.

Did he make any corrections as he went along?—If I recollect right, he seemed to interline some things in it.

You mentioned you were to seize certain persons, mention them over again?—It was the lord justice clerk, the rest of the lords of session, and then the lord provost.

What were they to do with them?—That I cannot remember.

Only that they were to be seized?—That was the expression.

Was there any thing mentioned about seizing the Castle?—No, I do not remember that being spoke of in the paper.

At what time was it proposed, it should be done, was it to be done at night or day, or when, or how soon?—There was no day mentioned.

Pray was it mentioned in the plan who was to have the direction of these people, who were to get the better of the military in this way?—No, I do not remember.

Was it mentioned there were to be leaders appointed?—Upon my word I cannot remember that.

You do not remember whether it was mentioned to be executed in the day time or night?—I cannot say as to that, but I rather suppose it was to be in the night time.

You mentioned they were to take possession of the banks?—The different banks.

Was there any thing mentioned of having commissioners to take an account of the cash?—Yes, to demand the cash; I think it was sufficiently mentioned in the papers to demand the cash.

After they had got possession in this way, what were they to do next?—I cannot say any thing farther. I cannot remember any more particulars in that paper.

After the plan was read over, what became of it? did Watt deliver it to any body or put it back?—If I recollect right he put it into a press.

Did you ever see that written plan again, after the time you mentioned?—No, never after.

Did you see any writing that had any connexion with it afterwards?—No.

Did Watt ever show you a copy of an address, after all things were seized in that way, or a proclamation?—No, he did not, but he read a paper of that kind.

When was that?—It was a committee night.

You cannot be sure any body was there but Downie?—I think Downie was there.

Where was this meeting?—It was a committee night in Mr. Watt's own house.

You are not sure whether Mr. Watt showed you the paper, or only read it?—I am sure I heard it read.

Will you tell us what was the substance of the paper?—As far as I can remember the substance ran thus: it was a copy of a proclamation to all farmers and dealers in corn, meal and hay, not to remove the same from their habitation under the pain of death; and also for all gentlemen residing in the country not to leave their habitation above three miles under pain of death.

And when was it to be done?—According as I remember, it was to be done immediately after the attack.

Do you remember in whose name this pro-

clamation run? by what authority or what person was to sign it?—No, I heard of no person that was to sign it.

Now, at the time when this plan was the subject of conversation, or read in the committee, was any thing said about arming the committee?—No.

Was any thing said about addressing the king?—Yes, there was upon the other side. I cannot be positive.

What was the nature of the address to the king?—The nature of the address to the king was thus: to dismiss his ministers, to put an end to the present war, or to meet bad consequences, or expect bad consequences.

Jury.—The witness says he heard nothing about arming, we have not heard how they were to attack the soldiers.

Was there any question made about the arms to be used?—No.

At any other time had you conversation with Watt about procuring arms, or did he take any means?—I never knew that he did, or that it was in conversation till he asked me to go to Robert Orrock, a smith in the Dean.

What was the purpose?—He did not mention the purpose to me, I went with him, as he asked me the favour to go with him.

What conversation had he with him?—He wished him to make some pikes, and Robert Orrock drew a model of a pike upon the table, and Mr. Watt asked him to work as fast as he could, for he had 4,000 to send to Perth, besides what he wanted to distribute about Edinburgh, and ordered Orrock to be busy, and as fast as he brought them in he should have the money.

What did he say?—He said he had 4,000 to send to Perth, besides what he had to distribute about Edinburgh.

Was it Orrock that drew the drawing of the pike or Watt?—It was Orrock.

Were you ever back at Orrock's house again except that time?—No.

Do you know any thing of Orrock making the pikes?—I heard him get the order, I never saw him working at one of them, only one day I was going up to the Dean, and we had some other business with him, a man and we were standing at the door of the *smiddy*, I saw a man working at a thing similar to this, and lord Swinton's servant asked the lad what it was, what was the use of it, and he told him it was to put on a gate.

Did you ever see any of them upon any other occasion than this?—No.

Did you ever see any of them in Watt's possession?—Yes.

Are you acquainted with John Fairley?—No, I am not acquainted with him.

Did you ever see him?—Yes.

A wright?—Yes.

Did you ever see him in your committee of Ways and Means?—Yes.

What did you understand to be the business?—What I understood was, he had been sent to the west country—before I saw him, I understood that he had been sent to the west, but what his orders were to the west I do not know.

Had you any reason to know it?—Not till I heard himself.

That was upon his return?—Yes.

Mr. *Anstruther.*—Was Watt present?—Yes.

When he (Fairley) returned from the west, and made his report to the Committee of Ways and Means, what did he say?—I can give you but a very small detail—he said he had been to visit a vast number of places; Mr. Watt took a note of them down upon paper, I think of the places; there was Queensferry, Falkirk, Kilsyth, Stirling, St. Ninians, Kirkintulloch, Campsie, Glasgow, Paisley.

Was there any thing particular mentioned with respect to Paisley or the others?—He said that Paisley was in a state of great readiness.

Did he mention any thing about any other place?—No.

What did you understand by their being in readiness?—I cannot tell what his orders were, I do not know what they were.

Mr. *Anstruther.*—Did you ever hear any other conversation about arming?—No. I do not remember any.

You disapproved of it?—Yes, I did; I said when that paper was first read, I by no means agreed to any thing tending to disturb the peace, or tending to shed the blood of my countrymen.

Jury.—Did you think something of that nature was proposed?—The paper that he had read in my presence led me to think so, in my weak opinion.

Mr. *Anstruther.*—What business was it the Committee of Ways and Means met upon the night Mr. Watt proposed this plan?—They met upon no other business—when first that Sub-Committee was appointed, they were to meet every Tuesday night.

Did not they do something that night, that he read that paper?—O aye.

Did he not write some letter?—I do not recollect it.

Do you remember seeing any printed letter signed by Hardy in the Committee?—No.

Then you do not know the answer to it?—did you ever see a printed letter in the Committee of Ways and Means?—Yes, I saw it in the Committee, I heard it read in the Committee of Ways and Means.

Was Mr. Watt present?—He was present when the answer was wrote.

Who wrote it?—He wrote it perfectly himself, and after he wrote it, he said he would read it over again, and he would correct it, and I never saw it more; I have never seen it since:—I think it is very similar to what I saw before.

Have you heard of any set of people called collectors?—I do not know what they were to do, I cannot give any positive answer.

Where did you hear it?—It was in the Committee of Union.

Lord Advocate.—Was Watt present when you heard those persons called collectors mentioned?—I cannot say.

Do you know of any money that was collected by the Committee of Ways and Means?—Yes, the society of the Water of Leith gave me 15*s.* to pay into the Committee, for they were of opinion with me, as I said before, it was to go for the benefit of Mrs. Skirving under the direction of that Committee, I recollect none but that and a bill of 15*l.* they received from Perth.

For what purpose was that money?—I suppose this Committee were to look into the circumstances of Mrs. Skirving, and give her the money as they thought prudent.

Did you ever see a printed paper called Fundamental Principles?—Yes.

Was that the principles of your Committee?—The Committee? I never saw them take it up.

Was it produced in the Committee?—Yes.

By whom?—It was produced by Mr. Watt.

It was produced by Mr. Watt in the Committee, you then being present?—Yes.

Now is that the paper?—That is the very paper I have seen there produced by Mr. Watt.

[Here he was shown the papers entitled Fundamental Principles.]

Mr. *Bonthorne* sworn.

Mr. *Anstruther.*—What are you?—A teacher.

Now take your own time—I believe you were member of some committee of the Friends of the People in the beginning of this year?—I was.

I believe you thought it right to come to a resolution to withdraw yourself from that committee?—Yes.

About what time was it you formed that resolution to withdraw yourself?—Perhaps about (I cannot positively say, but perhaps about) the 17th of April.

I do not want you to be particular as to a day—was Mr. Watt a member of that committee?—Which committee?

That committee you determined to withdraw yourself from?—He was.

What was the name of that committee?—The Sub-Committee.

Had it any other name?—Not that I know of, I understood it had another name, but I did not hear it.

What was the other name?—I have heard it since I was in confinement, it was called the Committee of Ways and Means.

Have you ever heard of a committee of Union?—Yes.

Who chose the Sub-Committee?—The committee of Union.

Who were the members of that Sub-Committee?—Mr. Aitcheson, Mr. Stock, Mr. Burke or Burt, I am not certain which, Mr. Robert Watt, I think, Mr. David Downie, Arthur M'Ewan.

Lord Justice Clerk.—Is that the Robert Watt?—[The witness looking at him] Yes, and myself.

Now, Mr. Bonthorne, had any thing passed in that committee that induced you to come to a resolution to withdraw yourself from it?—I thought so, my lord.

Now what was it that passed in that committee?—There were different things that passed in that committee, that I could not presently say.

Did you ever hear Mr. Watt, in that committee, propose any plan?—No, I never heard him propose any plan.

Did you ever hear him read any plan?—I have heard him read a paper, my lord.

Now, what was that paper?—I cannot say what that paper was, it is a considerable time since.

Lord President.—Recollect the substance of it as well as you can.—My lord, if you will please to ask me a question about it, I will answer.

Mr. *Anstruther.*—I rather wish you to recollect yourself?—I thought my oath required me to answer questions.

How much do you remember of the purport of that paper?—I remember very little more about it, because upon the hearing of it, I was in such confusion, it has cut off my recollection.

What was the purport of that paper?—I know nothing what the purport was.

What was it, as near as you can recollect?—I can say very little about it.

Lord Advocate.—You are under an oath to God to tell the truth, and nothing but the truth, if you conceal the truth you are criminal.

Lord President.—Did that paper say any thing about the Friends of the People rising upon any occasion, and to do what?—No, if I recollect, it rather went upon a supposition that such a thing could be done.

What was it that could be done?—My lord, I looked upon the whole as if it had been a kind of phrenzy, or something of that kind, and it struck me with such confusion.

Lord President.—You are bound to tell whatever it was.—Yes, as soon as I can recollect it.

Was there any thing about seizing the Castle in it?—If I mistake not, my lord, there was.

Surely you can tell whether there was or not?—I think there was.

What was it?—Nothing at all that I can recollect.

Lord President.—It is my duty to tell you, sir, that you are in very great danger. Every body must be sensible that you heard something, and can tell something, and you are bound to tell it. I must put you upon your guard. The Court will take it up. Did that paper contain any thing, or did it not, about seizing the Castle?—I think so, my lord.

What did it say upon that subject?—I can-

not recollect, my lord, particularly what it said, I just looked upon it as a supposition, that it could be done.

By whom?—By a number, if they could be collected; it was upon a supposition that a number could be collected for the purpose.

A number of whom?—A number of persons.

Did you suppose this meant the Friends of the People?—I suppose so, my lord.

Did it say any thing about seizing, surrounding, or attacking the soldiers in the Castle?—I do not recollect any thing of that kind.

Did it say any thing about lighting a fire, or doing any thing in order to draw the soldiers out of the Castle?—I am not certain whether there was not some expression about the register office.

About what?—About raising an alarm by fire at the register-office.

For what purpose?—I suppose it was to bring the soldiers from the Castle.

And in case they should be brought from the Castle, what do you suppose was then to happen?—I suppose to take possession of the Castle.

Did you suppose any attack would be made upon the soldiers themselves, or any attempt to take possession of them?—I do not remember any thing of that.

Was there any thing said about the lord provost or the judges, or any body in power?—I recollect no persons.

Was there any description of persons, such as judges and magistrates?—I do not recollect any thing of it.

Was there any thing said about banks?—Yes, perhaps, my lord, the word bank or banks was in it.

What expression was in it?—I think about seizing the bank or banks.

Was there any thing about seizing the excise-office?—I am not certain but there was.

Mr. *Anstruther.*—Was there any thing about possessing themselves of places of trust?—I am not positive of it.

What was the general design of the plan or paper?—I cannot say, my lord.

What was it that frightened you so much?—The appearance of it in general.

The appearance of what?—Of a paper read.

What sort of a paper?—A paper that has been just now quoted.

Lord Advocate.—That was the thing frightened him so much, and induced him to leave the committee.

Mr. *Anstruther.*—What were the contents of that paper?—I have endeavoured to answer the different questions.

Was the purport of that paper to seize the Castle?—That I believe I said.

Was it to seize the people of note or name about Edinburgh? Was it to seize any body?—Not one, that I recollect.

What were they to do?—Indeed I know not, it struck me with such a confusion, it put me from my recollection altogether.

Was any thing said about the guard-house, or about the baillies or magistrates?—No.

Any thing about officers?—No.

Any mention of lord justice clerk?—No, not that I recollect, I believe the whole of it went upon a supposition, if such a number were or could be collected.

What were they to do?—Those things formerly mentioned.

Do I understand you right, that the plan was, that if a certain number could be collected, they were to seize those places that have been mentioned?—I understood so.

Do you recollect any thing of what the numbers were?—No, I do not recollect any number.

Do you know whether they were large or small numbers?—I do not recollect the numbers.

Were they large numbers or small numbers?—I cannot give the numbers.

Did this plan alarm you, or did it not?—It alarmed me.

Now, tell me what it was that alarmed you in that plan?—The whole of it, as far as I understood or heard.

What did you do upon reading that plan?—As far as I recollect, there was a person that showed an opposition to it.

Who was that?—Arthur M'Ewan showed an opposition to it.

You agreed with Arthur M'Ewan?—I repeated the words, "No, no," I think so.

Then the plan you said "no, no" to, was the same plan that Arthur M'Ewan dissented from?—It was the same paper.

What was the business of the Committee of Ways and Means?—The Sub-Committee you mean.

Yes.—As far as ever I understood, it was just to transact the business of the Friends of the People.

Was it to collect money or was it not?—No, my lord, I did not understand it was to collect money.

Do you know any thing that was written or read in that committee of a paper that was afterwards printed?—Name it, if you please.

Called a circular letter?—I could not say, unless I saw it.

[The circular letter from the Committee of Ways and Means shown him.]

Yes, my lord.

You have seen that paper?—Yes, my lord.

Where did you see it?—I think I have seen it in manuscript.

Where did you see it in manuscript?—Perhaps in the Gazetteer-office.

Did you ever see it at a meeting of the committee?—It is the committee I mean.

Whose office did you see it in?—I do not know I ever had it in my hand, I was present when it was read.

Who wrote it?—I think it was Mr. Stock.

I ask if the place where the committee met, was in the Gazetteer-office?—Yes, it was.

It was not there that the other paper was read?—What do you allude to?

The paper that frightened you so much.—It was not there, it was in Mr. Watt's house.

Lord President.—What did Watt do with it after he had read it, and you said, no, no—what did Watt say?—If I remember right, he rose from his chair, and put into a press.

Did you and M'Ewan come away upon that?—We did not till we parted.

What did you do when you went home?

Lord Advocate.—You say you were very much alarmed and confounded at the import of the paper Watt read. You said before you were so confused when you heard the paper read, it took away almost all your recollection?—Yes.

I ask you this question; in consequence of this alarm, did you take any step immediately for satisfying the public, you were no longer an assistant to those persons?—No, I took no step, but soon after left the meeting altogether.

Did you advertise in the public newspapers that you had so done?—I did not.

Did you take any steps towards doing so?—Yes, my lord.

State to the jury what step it was you took or intended to take towards that purpose?—The alarm this paper gave me, caused me to resolve in my own mind to quit the meeting altogether; and I resolved a few days after to make such an advertisement; but after I had done so, an acquaintance of mine called upon me, and told me he was going a jaunt to the west country, and made some application to me, and I wrote a line or two to him to call upon Mr. Watt to advance him a few shillings. He was an intimate acquaintance of mine, and he thought he might be short of money upon some business he was going about, which he did not make known to me, and from the interest I had with him, I wrote a line or two after I had withdrawn myself from the meeting altogether, to Mr. Watt to advance him a few shillings, for which he would account on his return.

How did that prevent you from taking the step you have just now stated? Why should writing to Watt, to get Watt to advance you a few shillings for a friend of yours who was going to the west, prevent your doing that?—I had taken a farewell of all the committees.

Did you compose any advertisement for the purpose I have just now stated to you?—Yes, my lord, that same week I did.

Was there any particular newspaper in which you proposed to insert that, was it the Edinburgh Advertiser?—It was the Edinburgh Advertiser.

You did not insert it in that, because you afterwards wrote to Watt to advance a sum of money to a friend of yours going to the west country?—Yes.

Who was that friend?—An intimate acquaintance—John Fairley was his name.

A journey to the West?—He told me he was going to Falkirk to see a sister of his own; and he added, he proposed going a little farther.

And did he say besides a visit to his sister, he had any other business?—No, he did not; he told me he had a commission from Watt, but what that commission was he did not state.

Did he make any application to you for money to make this journey?—From the intimacy between him and I, I would have lent it him, but it was not in my power, for that reason I wrote to Watt.

Did you give those reasons to Fairley?—I did.

Did Fairley leave you to go to Watt?—Yes.

Did you see Fairley after he performed the journey?—I did not.

I thought you said before he went away you did?—Yes.

But after he came back, did you or not meet with Fairley?—Yes.

Did Fairley communicate to you the names of the places where he had been in the course of that journey?—He did not.

Did he mention the names of the persons he met in the course of that journey?—No he did not.

Did he state that Watt had complied with the request for money or not?—He did not.

You did not ask him?—I did not ask him.

Would you know the advertisement again you prepared after hearing that alarming paper read, and before you wrote that note of introduction to Fairley, if you saw it again?—I certainly should.

Is that the very paper?—[Showing him a paper] Yes, my lord.

Your own hand-writing?—Yes.

That paper was read as follows:

"*Broughton, April 21.*

"To the public; I William Bonthorne, teacher in Broughton, was chosen a member of the Committee of Union in March last, and Sub-committee; but for reasons of weight with me, declare that I have dropped all connexion or communication with the said committees. WILLIAM BONTHORNE."

Is that the paper you prepared for insertion?—Yes.

Was there any particular reason why you applied to Watt to advance a sum of money to Fairley for this journey, in preference to any other person?—It was purely out of friendshp to Fairley.

I ask you why you selected Watt to be the person to lend money to Fairley rather than any other person?—Because he told me he was going to Watt, or was going to receive a commission from Mr. Watt.

Did you ever hear of a man of the name of Hardy?—Yes.

In what place have you heard of that person's name?—I cannot fix upon a particular place.

Did you ever hear of that man Hardy in the Committee of Union or the Sub-Committee?—Yes, I think so.

Upon what occasion was it you heard the name of that person mentioned?—I think it was upon the letter that he should have sent, if I mistake not, that I heard his name mentioned.

It was in the committee that you heard his name mentioned, and it was upon the occasion of a letter that Hardy had sent—It was in the Union Committee or Sub-Committee?—Either one or the other.

Was that a written or a printed letter? as far as you recollect?—I do not positively recollect.

Do you recollect whether it was written or printed?—I think it was a printed paper.

Do you recollect if this Hardy signed himself in any particular character?—I do not know in regard to his subscription, but I recollect the character he went under was secretary to some committee in London.

Should you know that paper again if you saw it? take time and look at it.—I think it was like this letter.

But an answer was agreed upon to that letter in the committee?—I think so.

Do you remember what particular members of the committee were present when the answer was drawn up to this letter of Hardy's?—I think, all the seven excepting two.

Who were the two that were absent?—Aitcheson and Burke.

Do you recollect what the import of that letter was—what it related to?—The answer do you mean?

Either the letter or answer?—The letter was shown me.

What was the answer?—I do not recollect one sentence of the answer, but only that an answer was given to it.

Did this answer, or did it not relate to your choosing delegates to attend a British Convention to be called in England?—I remember hearing of such a thing, but whether that letter contained such a thing I cannot be positive, but I remember perfectly such a thing was spoken of.

Who drew the answer to the letter?—I think if I recollect well it was Mr. Stock.

Do you recollect in what manner this answer was to be forwarded to Hardy?—Yes.

How was it?—If I recollect Mr. Stock was to take it to London himself.

You say Mr. Stock was to take it to London himself?—I think so.

Do you know whether Stock is gone to London, or that he went soon after this?—He meant then to go a few days after by sea.

Did you ever in the committee hear of any paper being composed relative to the fencible regiments?—I think so.

Who composed that paper?—I think Mr. Stock.

Was Watt present?—Yes, Mr. Watt was present as far as my recollection leads me.

Look at that paper and see if that paper be like the paper that was composed in your hearing?

[The witness, looking at the paper, said,]

Yes, perhaps, with some variations or alterations. I only saw it in manuscript.

Upon the whole that is similar, there may be some variation from the paper Stock produced, and you saw in the committee?—Yes.

Look at that, and see if ever you saw it before; is that your hand-writing, Mr. Bonthorne?—Yes it is.

Lord Advocate.—What paper is that?—That is a paper, my lord, that was a minute wrote in the committee of union; I did not write it in the committee of union, I only took a copy of it; I was sent for, and I took a copy of it. You will see who the original was wrote by, by that.

Who composed that paper?—It is mentioned; Robertson, I think, is his name.

[That paper read, as follows:]

"*Edinburgh, 5th March*, 1794.

"The general committee having met, citizen Stock appointed præses, and citizen Robertson secretary. The business commenced by forming a plan of organisation of the Friends of the People in Edinburgh, citizen Watt proposed to recommend to the different societies to choose a permanent committee, to sit once a week, and that there should be a committee of seven to be empowered to transact the business of the Friends of the People. This committee to report to the different societies, and that this committee recommend to their different societies to choose two or three members for this committee, to meet on Tuesday next at seven o'clock, and that they should choose the sub-committee to sit the same evening, and report to the general committee."

That was dated Edinburgh, 5th March?—It was just about the beginning of March the committee of union met.

Cross-examination by Mr. *Erskine*.

At the time you left the committee, did you not take a new school? I wish to know whether you was not forming a new connexion in another part of the town when you left the committee of Ways and Means?—Yes, I was going to remove at Whitsuntide.

Did you give that as a reason for removing from the committee?—Yes, I did; perhaps it was the only reason that I gave.

Mr. *Hamilton*.—You mentioned, in a former part of your examination, that Mr. Watt produced a plan with regard to some measures that he thought might be adopted?—He took such a paper from his pocket and read it over; I know nothing more about it than that he just read it. Whether it was a copy or not, I cannot say; he just read it, without any comment upon it.

How long had you been together that evening?—I cannot ascertain it; perhaps a few minutes; I could not ascertain it; it might be half an hour or an hour.

Mr. *Erskine.*—Did Watt propose it and press it upon the committee, as a plan to be put in immediate execution?—No; he just read it, and put it up in the press, without any comment upon it, as far as I recollect.

Did you drink tea with him that night, or sup with Watt?—No, I did not, as I remember. Did you say sup?

Yes.—Perhaps I did take a cup for supper, or something of that sort.

Mr. *Sheriff Clerk* sworn.

Mr. *Anstruther.*—Did you make any search amongst Watt's papers?—Yes, I searched Watt's house for papers, and carried away such papers as I thought related to the proceedings of the Friends of the People.

Did you find that paper there? [showing a paper to him.]—Yes, I remember that paper was found there, and was marked in my presence with the initials of the persons present in Watt's house, before we left it.

Was this other there? [showing another paper.]—Yes, I remember this particularly.

Do you remember that? [showing a third paper.]—Yes, I remember this perfectly likewise. These papers were found in Watt's house.

There were three of them? The importance of one must appear from its inspection, and not from reading. It is a drawing of pikes, and was found in Watt's house.

Mr. *Clerk.*—There were papers found in three rooms.

Mr. *Anstruther.*—This is another paper found in Watt's possession. It is the paper that Aitcheson mentioned he had written by direction of the sub-committee, and sent to a person he did not mention.

Lord Advocate.—And the sheriff swears he found that paper in Watt's house.

[The paper read, as follows:]

"Sir; Last night, at a meeting of the general committee of the Friends of the People in Edinburgh, a motion was presented by citizen William Robinson, in consequence of a representation from citizen Dr. Hunter, that you wished to be informed of the state of public spirits in this city, and that you likewise desired to have some subscription papers forwarded to you, whereupon it was resolved, that the sub-committee should be authorized to write you; and, while they transmit to you the subscription papers, requested to inform you at the same time, that the spirit of freedom, notwithstanding all the unconstitutional measures lately adopted, is by no means depressed, but like a fire attempted to be smothered, increases ten-fold, and will, ere long, consume all those who attempt to extinguish it. There are many things which we might wish to write, which, perhaps, in the present crisis, it would be imprudent to commit to paper; we shall therefore conclude, with wishing an increase to the numbers of the real friends of freedom all over the globe, and of the friends of constitutional reform in this island in particular.

"When you, or any of the worthy members of your association, have business this way, we shall be happy to see you. Societies of the Friends of the People meet every night, except Saturday and Sunday, either at C Robertson's school, Philip's school, Calton, or C Geo. Ross's, Liberty-court, South Bridge.

"In the name of the Edinburgh committee of the Friends of the People—I am, &c.

"P.S. Either on Saturday, or at farthest on Tuesday next, you may expect the first number of the New Gazetteer, which will then begin to be published in the spirit of the old. Lest the proprietors should fall short of funds to pay the stamp duties, it is proposed that every subscriber should pay per advance. Subscriptions by C Geo. Ross, Gazetteer office, South Bridge, who will grant receipts for the money."

"*Sub-Committee, April 1st.*

"Resolved, That Mr. Reid, the former treasurer, be requested to continue in his office, subject to the restrictions to be hereafter laid down.

"Resolved, That till his determination be known, be requested to take charge of the monies which may be received by the committee this evening.

"MINUTES.

"Report of the Committee of Correspondence given in.

"From the Canongate society, No. 3, received the sum of one pound ten shillings and three-pence halfpenny, which is hereby placed to their credit. DAVID DOWNIE."

"Regulations of the Sub-Committee, with respect to the Treasurer"

"*April* 1. 1794.

"All monies that shall be paid into the treasurer's hands, from this day, shall be applied to such purposes only, as the Committee of Ways and Means, for the time being, shall direct.

"The treasurer shall give a receipt to the said committee, for what monies he may have received from them.

"The treasurer shall not give up any part of the said monies on any pretext, except on a requisition, signed by four members of the Sub-Committee, and specifying the sum wanted."

Mr. *Anstruther.*—Part is in Aitcheson's hand, and part by somebody else, we do not know—It was found in Watt's possession.

John Fairley sworn. Examined by Mr. *Solicitor General.*

What is your business?—A wright.

Where do you live?—In Broughton.

Is there a society of Friends of the People there?—Yes.

Were you a member of the British Convention that met last year?—Yes.

Were you a member of that convention, when it was dispersed by the lord provost and other magistrates of this city?—Yes.

Did the members of the convention meet after that?—Yes.

Can you tell when it was?—I think it was in the month of December.

And you say your society continued still to meet after that convention was dispersed?—Yes.

Were you chosen in any office after the dispersion of the convention? were you made collector?—Yes, I was.

Explain what was the meaning of this office of collector; what were you to do?—When I came into the Broughton society (I never heard of the collectors before) they were just choosing; they had chosen one, and beginning to choose another, and they chose me. I asked the business, Mr. Bonthrone came forward and told me they were to collect money, and to collect sentiments.

By sentiments do you mean sense of the people?—What I understood by it was, that there were a great many of the societies who were as warmly attached to the cause as ever, but on account of business, could not give attendance regularly, but at the same time were so attached as to contribute money for the expenses; that was the reason of having collectors; and for the collection of sentiments. Bonthrone said, we want to know who will be for procuring universal suffrage and annual parliaments: there were two collectors for our society.

Did the other societies appoint collectors also?—I understand so, but I could not attend any other societies but my own; there was one or two meetings held.

Who was chosen preses of the meeting of collectors?—were you?—Yes.

Were you chosen president of the committee of Union?—No, I was not.

Do you know that there was a Committee of Union, and of Ways and Means that met at George Ross's?—Yes, there were committees that went by that designation, but I was not at the founding of them.

Had you any occasion to do business with the Committee of Ways and Means?—I was twice at the Committee of Ways and Means.

Among other persons, was Watt present when you attended there?—Yes I think he was there.

Pray, Mr. Fairley, had you any occasion to have any conversation amongst yourselves about the Friends of the People arming themselves, soon after you were appointed collector, or about that time?—Had we conversation about arming?

Yes, about arming the Friends of the People?—I never heard any thing about arming the Friends of the People. I heard there were some pikes getting ready.

Were you well acquainted with Watt, and when did you first become acquainted with him?—It was not very long before I was apprehended, that I became acquainted with him.

Did Watt call upon you respecting these pikes?—Yes, Mr. Watt called upon me.

Did Mr. Watt mention to you any thing about a number of pikes having been provided, and what number; I could not say that he mentioned any thing about the number. I do not recollect Watt specifying any particular number of pikes.

Did he mention that any had been preparing? What I ask you again is just to mention what conversation passed between you and Watt relative to the pikes—Did he tell you there were pikes preparing for the use of the Friends of the People?—He showed me some pikes first.

Had he ever mentioned the subject to you before?—Yes, we had spoke about this subject before.

Did Watt come to your shop and make a drawing of a pike in your presence?—Mr. Bonthrone had been talking about it. I do not know whether I drew a plan of the pike according to the description I had from Sheffield. Bonthorne said I might draw one and he would take it. I met with Mr. Watt in the street one day, and I was telling him I had been mentioning to Mr. Bonthorne my drawing some. I cannot say what answer he gave me; but sometime after he came to my shop and desired me to draw one. I scratched one upon a slate. I told him I would draw two or three upon a piece of paper, and bring it up to Mr. Watt.

Did you accordingly do so; look at these drawings, and see if you know them. Are those the drawings you made for Watt?—I think they are.

These are the designs found in Watt's possession. Now, Mr. Fairley at the time when you carried this paper to Watt containing the drawings of these instruments, what conversation had you with him upon the subject of pikes and arms, and in what manner were they to be used? tell all you know to these gentlemen.—I cannot remember every particular conversation we had about pikes.

Did he mention to you what use was to be made of them, by putting them into the hands of the people?—He said they were intended for self defence.

And did he tell you they were intended to be put into the hands of the Friends of the People?—Mr. Watt said to me there was no person to get them but such as wanted them, and would pay for them.

Did you express any fear of bloodshed upon this occasion? did you say any thing to Mr. Watt about what was said? did not you say you were afraid of bloodshed?—He said they were intended for self defence.

Did you say any thing at all about bloodshed, and what answer did Watt make upon the occasion? did you say any thing about your fear of bloodshed when you heard of these weapons being mentioned?—Watt and I were once talking together about different things; I could not say the particular words, but I will tell you the meaning—I was expressing my fears that the present measures of government would drive the people to despair and I was afraid for the consequence—I could not say what the particular words were, it was something to that purpose.

And what did Watt say?—He said, he hoped there would be no bloodshed.

Did he say the plan could be executed without bloodshed?—I do not recollect the particular words now; it is the substance.—Nobody can remember words.—When I was expressing my fears for the consequences, he said they would be imprisoned.

Who would be imprisoned?—Those, I understood, that were most active against the cause of the people.

Who said something of your apprehension of bloodshed? repeat what you said just now about certain persons being seized?—All I recollect is, I was afraid the present measures of government would drive the people to despair, and I was expressing my fears for the consequences.

What did Watt say?—He said he hoped no blood would be shed, for they would be imprisoned.

Who were they that were to be imprisoned?—Those that were most active against the cause of the people.

Pray, sir, did you say any thing at all about the soldiers being any obstacle to completing your plan; and what did Watt say about them?—I could not say; I might be saying something about the soldiers,—that if they had any fears about an extremity, I would not be for offering any violence to the soldiers,—I would just speak to them, and I hoped there would be no occasion for violence.

What did Watt say?—I do not recollect what Watt said.

Recollect as well as you can.—I cannot recollect the particular words.

But the substance, as well as you can, about the dispute between you and the soldiers?—I think all that was said about the soldiers, was, that I said, I would be just for speaking to them, for they would be as glad of freedom as we would be.

Was it after your enemies had been imprisoned, that this was to happen, you were to speak to the soldiers?—I had given my opinion to Mr. Watt; I never heard it before; I gave it as my opinion.

Was there a deputation to be sent to the Castle?—I just said, if measures came to an extremity, and that the soldiers were called out against us, and there would be reason to suspect they would, I would just send up somebody to speak to them, whether in or out of the Castle.

To prevail upon them to do what?—To speak to them, so that they might not harm us.

Lord President.—I should be glad to know, when the witness said, that the soldiers would be as fond of freedom as they were, whether it was his meaning, that there was any body in this country not free?—My lord, the cause in which we were engaged, was for procuring universal suffrage and annual parliaments, and till that was obtained, I thought it was my right, as a subject of a free state, to have a share in the representation of my country; and I considered, if I had it not, I was not free.

You mean then, that you were entitled to oppose those who were against annual parliaments and universal suffrage?—I did not say so.

Did Mr. Watt propose any thing violent with respect to the soldiers?—There were reports going, that the Friends of the People were to be attacked,—and different things.

What things?—There were reports going, that the Friends of the People were to be attacked,—and different things,—and we did not know in what manner,—and I just gave it as my opinion, if matters came to that extremity, we had reason to expect the soldiers would be called out:—if they were, I would be just for speaking to them.—I cannot say the exact words.

Mr. Solicitor General.—The prisoner I suppose means to ask a question, but he had better wait till our examination is over.

Court.—He must wait; you will be allowed to ask any question when the examination is over.

Mr. Solicitor General.—Had you any conversation with Mr. Watt about this plan of seizing those enemies of the people? Was there any proposition made for seizing them in different parts of Scotland at one time?—I do not recollect saying they were to be seized in different parts of Scotland at one time.

Court.—The Court does not hear you.

You heard that question, give me the answer to it?—I have some idea of something being mentioned, though I cannot be quite sure of it. We entered into a sort of conversation. I cannot say exactly what I said, or what he said.

Was there something said about couriers?—Yes.

After seizing upon these people, you were to send couriers to all parts of the country about what had been done?—I think there was something of that kind mentioned.

Was any thing mentioned about what the collectors were to do?—Mr. Watt once said to me he would give me some of the arms to show the collectors.

These were pretty important conversations?—I mean to speak fairly. I cannot recollect what I said.

Mr. Anstruther.—We do not want the very words.

Lord Advocate.—The substance and purport

of what you said, to the best of your recollection, at the time when Watt proposed showing the arms to the collectors?—We talked about it at different times; it was Mr. Bonthron who first talked to me about showing them to the collectors; and Mr. Watt showed me some, and my answer was, there was no harm in settling any thing by way of merchandize, and that expression he understood relative to the pikes.

Did Mr. Watt accordingly show the collectors some of the instruments?—I could not say whether he shewed some to them or not.

Did he show them to you?—Yes.

Where were they?—In his own house.

What were they like?—They were not exactly like these. [Looking at some pikes on the table.]

Look at those pikes?—I cannot say whether they were them or not, they were made after that form.

Did he desire you to carry them any where to show any body?—It might be at that time he said he would give them to me to show the collectors.

Did you ever carry any to Ross's?—No.

Were you ever asked to carry any to Ross's?—I should imagine it would be at that time when they were given to me to show the collectors. I understood I was to take them to the collectors.

And what were the collectors to do?—I was only to show them to the collectors, and the method I was told was—I was to shew them, and if any person asked, would I sell one of those, I would have done it; if no person asked, I was to bring them back; if any collector said they wanted such an instrument, I was to give it him. I was to sell them; if not, I was to bring them back to Mr. Watt's.

Did you accordingly do so?—No, I did not.

What was your reason for refusing to carry these articles of merchandize, and allowing them to buy them if they chose?—I made some objection.

Then you must tell to the Court and the jury what that objection was, you cannot have forgot it.—I do not recollect what the objection was, but the fact of the matter was, I did not wish to take them.

Why did you not wish to take them?—I did not take them at that time.

Did you take them at any other time?—No, I did not.

What was your objection? I know you did not take them at that time, you say that you had an objection.—Because none of the collectors had asked me, and I wanted to speak to the collectors before I would think of doing it.

Then did you ever speak to any one collector upon the subject?—I do not recollect.

Then I put this question to you. Was the reason why you objected to carrying those pikes from Watt's house to the collectors, that you thought it unsafe and dangerous for you to do so? Now, answer this question, was it, or was it not?—I did not wish to take them.

Was it for the reason you have heard mentioned?—[No answer].

Lord Advocate. You can say whether it was, or not the reason?—I did not think myself of doing any harm with them, but I did not wish to take them to the collectors; they would just have said that I had been bringing them for the purpose of distributing them.

Lord President. If the collectors wished to have them, you were to sell them; was there any price specified?—I do not recollect any, I suppose it was whatever price they proposed.

Lord Advocate. Did Watt tell you the cost?—No, he did not.

Is it a common trade for people to sell articles of that sort exactly at the price they cost?—[No answer].

Court. Had you no profit upon the trade?—I had an objection.

What objection?—That although I thought no harm in it myself, if I took them, they would be saying I wished to impose on the collectors before they asked me.

Pray, were you ever sent to the west country by the Committee of Ways and Means?—Whether I was sent by the Committee of Ways and Means, I know not. I was going to the west country to see a friend of mine at Airth. The night before I set out, I had been in company with Mr. Bonthrone, who said he had a letter or something of that kind to send to Borrowstounness. I told him I was going to the west, and would take any letter for him. The next morning I went to Mr. Watt's, and told him I was going to the west country, and asked if he would give me a letter; he said he would. I said, whatever I had to take for him, he was to leave at Mr. Campbell's, the hatter, at the Luckenbooths, and I would get it in case he was not in at the time I went away. I went to Mr. Campbell's, the hatter, and got a parcel to be carried west.

What did that parcel contain?—There were different copies of papers.

Should you know them again, look at that paper, was that one of the papers in the parcel?—I think it was one of them.

Was there any more than one copy?—I cannot say the number.

Might there be ten or twenty?—I can speak to upwards of ten, but I cannot speak to the number.

Look at this other paper?—I think that was another paper.

Had you more than one copy of this other paper?—Yes.

Might there be ten copies of them?—Yes.

Mr. *Anstruther.*—Gentlemen, they are papers that have been proved by a variety of people, but have not yet been read.

Mr. *Solicitor General.*—How were you to dispose of those papers?—He said—

Who said?—I called upon Mr. Watt before

I went to Mr. Campbell's, and asked if he had left it; he said yes, he had left something for me yonder, at Mr. Campbell's, which I would know what to do with.

What was it you were to do with them?—That was what Watt said to me, I knew what to do with them.

What were you to do with them?—I will tell you what I did, I called upon different people in the west country.

At what different places of the west country?—At Queensferry, Stirling, Saint Ninians, Kilsyth, Kirkintulloch, Campsie, Glasgow, Paisley, and Falkirk.

What did you do at all those places?—I gave them a copy of each of these.

You gave a copy of each of these, at each place you have named?—Yes.

Had you any written instructions when you went to the west?—In the same parcel there were two bits of paper.

What were they?—Instructions. It is so long since I do not remember particularly.

But the substance?—The substance was to correspond with Mr. Downie, and to send money to him.

Where were they found?—In the packets he left at Campbell's.

There you found written instructions?—In the parcel.

What did you do with the written instructions?—I returned them to Watt.

After your return from the west?—Yes.

When did you first open this packet?—I opened it first at the Queensferry, and then found these instructions.

Who was this Campbell? was he a member of the British Convention?—He was.

Was there any thing mentioned about sounding the sense of the people?—Yes.

Upon those plans you had been formerly talking with Mr. Watt about, regarding a grand plan; recollect yourself, the question is plain.—I could not say he spoke about sounding. I think there was something about a number of patriots, there was something about that.

Now, in all the different places, did you inquire for the patriots, to take an account of the number?—I never asked about any number.

Lord Advocate.—Now, sir, you say Watt told you, you would find a parcel at Campbell's, the hatter's, and you found one. Did Watt tell you any particular towns in the west, to which you were to go?—No, he did not.

Did that paper of instructions contain the names of any particular towns or places to which you were to go?—I do not recollect getting any names.

Then it was perfectly left to you to go to any place you pleased in the west of Scotland?—I suppose it was left to my own discretion.

Did any person recommend you to go to Borrowstounness?—I do not recollect any more about going to Borrowstounness than what I have said.

Did you go to Borrowstounness?—I went first to Stirling, and came through Borrowstounness in coming back.

You were in Queensferry? Did you show any of those papers in Queensferry?—No, I did not.

Did you distribute any in Stirling?—I think I did.

Did you or not? I will not take that answer.—I think I gave some in Stirling.

You did not leave any in Queensferry?—Because I did not see any person there in particular.

Had you any particular person that you were directed to at the Queensferry?—No, I had not, I had an acquaintance at Queensferry.

Then you went to Stirling?—Yes.

Did you or not give one or more of these papers to any person in Stirling?—Yes, I gave them to all the folks I called at.

Now, sir, do you, upon your oath, recollect the name of any single person in Stirling to whom you gave the paper?—There was a Dr. Forrest, and there were two or three more there, I gave one or two. I just gave them in the morning.

In whose house was it you gave the papers to Dr. Forrest and the others?—It was in Dr. Forrest's house.

Pray had you ever seen him before?—No.

Then how came you to go to his house?—I had heard him spoken about before in Edinburgh.

I ask you—was it not in the committee of Ways and Means Dr. Forrest's name was mentioned?—Dr. Forrest's name was not mentioned to me there.

Was it Mr. Watt who mentioned the name of Dr. Forrest to you?—No, sir.

Do you say that upon your oath?—Yes.

Did you mention to him any thing with respect to the committees that were established in Edinburgh?—I suppose that letter would tell him.

Did you do it yourself?—I suppose I might tell him so.

Did you ask of Forrest the number of patriots in Stirling?—I could not say whether I asked him the particular number or no—I asked him how the society was flourishing there, or something of that nature.

Did you ask him any thing else about the society?—I do not recollect asking him any thing more about it.

Do you not recollect asking him any thing else?—Other persons were present in Forrest's house at that time.

Who were those persons—do you remember them?—Doctor Forrest went with me and got them—I think there was one of them they called Thomson.

How many were there of them?—There were two or three besides that Mr. Thomson.

How long might you remain in company

with these persons?—We might be there an hour or two.

Did you understand these persons to be what they call Patriots, or Friends of the People?—Yes.

What was the substance of your conversation in general?—They would begin with the news of Stirling, and I was telling them the news of Edinburgh.

Do you recollect in general any one circumstance relative to the committees in Edinburgh which you stated to Forrest, and Thomson, and others?—I have no doubt I would tell them about the committees, but I spoke to Dr. Forrest about the plan I have already told you.

What was that?—About imprisoning those that I have already spoke of.

Well, what did Forrest say?—I am sure I do not recollect what he said.

Did Forrest say any thing in reply?—I do not recollect.

You mentioned that plan to Forrest?—Yes, I mentioned it to him.

Did you mention any thing in that company with respect to the plan of arming in Edinburgh, whether for self defence or any thing else?—I may have told them that I heard the Friends of the People had offered their service to the duke of Buccleugh, or something of that sort—I might also have told them what was done in Perth.

While talking to Dr. Forrest or any one else, did you, or did you not draw upon paper or upon the table, in company with one of these men in Stirling a drawing of that pike or battle-axe similar to what you had seen in Edinburgh?—take care before you give the answer, it is very material you should take care?—I recollect it—I believe I did.

Lord Advocate.—He now recollects in consequence of a specific question I put to him—he recollects making a drawing of those weapons which he had seen in Edinburgh to show Dr. Forrest.

Where did you go to from Stirling?—I went to St. Ninians.

Whom did you see there?—A Mr. M'Cross.

What is he?—A minister.

Did you show him any of the papers, or leave a copy with him?—I read it to him, and as far as I can recollect, I left papers with all the gentlemen.

Was M'Cross a relief minister, or minister of the parish?—A relief minister.

Pray, was M'Cross an acquaintance of your's before that period?—No, he was not.

Did you ever see him in your life before?—No.

How came you to go to M'Cross?—It was some of the folks of Stirling gave me a direction.

You went to Kirkintulloch or Campsie or St. Ninians; pray, whom did you call on there?—I called upon a Mr. M'Ewan, a minister, and Mr. Wheeler, a minister, a relief minister.

Did you ever see them before?—No.

Who directed you to them?—I think it was Mr. M'Cross—the man at St. Ninians.

Where did you go next?—I went to Campsie.

To whom there?—I do not know the names of any in Campsie, Mr. M'Ewan went with me.

What kind of people did you wish to be introduced to?—The Friends of the People.

You went to Glasgow and Paisley at last?—Yes.

Was that the utmost extent of your tour? you went no farther west?—No.

Had you any acquaintance in Paisley before?—No.

And whom did you go to there?—I called first at a Mr. Hasty's there.

Was he a Friend of the People?—Yes.

Was he a member of the British Convention?—Yes.

And you left papers with him?—Yes.

Now, after you were at Paisley what did you do next? did you come home again?—Come home? I came to Glasgow.

Why not to Edinburgh? why not straight home?—I came home by the canal, but did not call on any body, and came home to Edinburgh.

When you came back to Edinburgh where did you go first?—Straight home to my father's.

How long did you remain at home?—Just a short time after resting.

Where did you go then?—To the Committee of Ways and Means.

Was it the usual night of the committee's meeting?—Yes.

Did you find any of them assembled?—Yes.

Who were they that were assembled?—Those that were there, were Mr. M'Ewan, Mr. Downie, and Mr. Watt.

You remember those three?—Yes.

Now, sir, did you report to them the result of your journey?—Yes.

Did you give any one of them the instructions you had found enclosed in the packet you received at Campbell's?—Not at that time, I gave them to Mr. Watt some days after.

Did you, after your journey was over, or on your way, or in the committee, make up a list of the places and persons to whom you gave those papers, whom you had seen in the course of your embassy?—I took a list as I went along.

What did you do with that list?—I gave the list to Mr. Watt also.

You talked of instructions you found in that packet, was there any other paper you found in that packet, different from the two copies you intended to distribute?—There was another paper, authorizing me to call at the societies.

Did you show that paper to the different societies you saw in the course of your pro-

gress, as your warrant?—I never was in the societies, but I showed them to the persons I spoke with.

Do you remember what the general purport and tenor of that commission was?—It was just desiring me to call at them.

Do you recollect any thing else in it?—It just directed me to call at them, and tell what I did when I came back again.

Was the purport of this commission, that they might pay credit to you and receive you?—I suppose so.

Was that commission signed by any person or persons?—I do not recollect it being signed by any person or persons.

You do not recollect whether it was signed or not?—No.

Do you recollect whether it was sealed or not?—There were seals at it.

Were there no names opposite to those seals?—No. Not as I recollect.

When you visited persons in the course of your journey, whom did you state your authority to come from?—I said it was from the Committee of Ways and Means, and it was sealed:—I understood it was something to that purpose.

And the people you showed it to, thought so too?—Yes.

Whom did you give that commission to?—I gave it back to Mr. Watt also.

After your return?—Yes.

Pray, sir, did you defray the expense of this journey out of your own pocket, or out of what fund?—I received from Mr. Downie, about 30 shillings.

By whose order did you get that money?—Mr. Bonthrone gave me a line to Mr. Watt, and Mr. Watt gave me a line to Mr. Downie, and Mr. Downie gave me the money.

Look at that paper, and refresh your memory.—That is the list I gave in to Mr. Watt.

Mr. *Anstruther*.—Is that your hand-writing?—Yes, it is my hand-writing.

What is that a list of?— Some of the folks I did, and some of them I did not call at.

Did you call at all of those places?—No. I did not call at any other of the places, than what I told you.

For what purpose did you make out that list?—I made it out that they might be corresponded with.

Who were to correspond with them?—The committee.

Now, this is your hand-writing, is it?—Yes.

Now, read the two first lines.

Lord Advocate.—Begin at the top and read the three or four first lines legibly and audibly to the jury.—"Stirling, support by money."

Tell me what word that is that is next to money?—It is a blank.

What is the meaning of that blank? there are three letters and a stroke between them, see what it is and make it out from them?—I suppose it is "courage."

Lord Advocate.—Read it on now.

Witness.—"Stirling, support by money, courage not great."

Mr. *Anstruther*. — Gentlemen, there is "S——g," which he hath filled up with the word, Stirling; then it goes on "support by money," at full length; then follows "C——ge," which he tells you, means courage; then he tells you the line would run: "Stirling, support by money, courage not great."

What do you mean by courage not great? perhaps that paper may refresh your memory as to what passed with Forrest and the rest; tell me what is the next word, you say there is Stirling, support by money, courage not great; what comes next?

Lord President.—What paper is that?

Mr. *Solicitor General*.—It is his own report, it means Stirling, support by money, but courage not great.

Mr. *Anstruther*.—Tell me what is the next word.—I suppose it means "support."

Cannot you tell us?—It is a blank.

You have filled up two blanks after a little difficulty, now fill up that.—That is "support," I suppose.

And what are the words that are next?—"Not certain."

There are two other little words? — "support as yet not certain."

Then the first beginning of this paper delivered back to Watt is, "Stirling, support by money, courage not great, support as yet not certain." Now, tell me, why did you leave those three words blank?—I left them blank.

Why did you leave them blank? was it, that it was not very safe to fill them up?—[No answer.]

Lord Advocate. — Give an answer to the question, tell us whether your reason was, that you thought it not safe or what? say one thing or the other.—I did not like to be writing that in the list.

Mr. *Anstruther*.—The Jury will look at the names. You have said there were two papers in this bundle, one your commission, the other your instructions? Did you ever show those instructions to any body? — I showed them to the different people I called upon.

Did you show your instructions to Dr. Forrest?—Yes, I showed them to all the people I called upon, and showed them to him among the rest, no doubt.

You showed your commission to Dr. Forrest and all the rest?—Yes.

Do you recollect no more of those instructions than you have told us? because if you do, I desire you to tell them now—if you do not, somebody else will.

Lord Advocate.—Take care what you say, they all saw your instructions.

Witness.—Those instructions I think spoke something about a plan, but I do not recollect the particular words.

Mr. *Anstruther*.—I do not want them; I do

not desire the particular words; but tell me what the general purport of your instructions was as far as you recollect, and what plan it was it referred to?—I did not say the plan.

What did it say about a plan?—It was speaking about a plan, but I cannot speak the words. I have it in my idea, it spoke something about a plan, but I cannot say.

Did it call it a great plan, or a grand plan, or something like that—did it or not?—I have an idea of that word being in, but I cannot tell exactly that there was the word grand plan.

What was the grand plan to do?—What that was to do, I could not tell.

Was it to settle every thing?—I do not mind of its just speaking in that way.

What did you understand it to mean at that time, when a plan was mentioned in your instructions?—I understood Mr. Watt speaking to me.

But what did you understand it to mean?—It might be that plan Mr. Watt was telling me.

Lord Advocate.—You will see what he says, half an hour after asking the question.

Mr. *Anstruther.*—Did it say any thing about the committee of secrecy?—It spoke something about a committee.

What sort of a committee?—It spoke about, I do not know whether it was secret or not; it is impossible, I cannot keep in my mind every thing.

What did you say about a committee? try it again.—I have some idea that it spoke something about a committee of secrecy.

Did it say any thing about Britain being free? you have told us that it spoke about the grand plan which Mr. Watt spoke about—did it tell any thing about being free?

Lord Advocate.—Say yes or no which ever you like.—I think I remember of its saying something about that.

Was Britain to be free when that plan was executed or not; was the plan you mentioned before to be Mr. Watt's, was that the plan that was to make Britain free or not?—I tell you what I remember, viz. about its speaking something about those things, but I cannot say what.

Did it say Britain was to be free; what was it, that was to make Britain free? was it this plan or not?—I cannot recollect the expressions.

Lord Advocate.—What was it that was to make Britain free? was it the grand plan?—It said something about it.

What was it that was to make Britain free—the substance—the sense?—I think they were different sentences as far as I could make them out.

What was the sense of all the different sentences?—It said they hoped Britain would be free, something of that kind.

But you cannot say whether the plan was to do it or not?—It did not say, whether the plan was to do it or not, it might mean that.

Whom were the committee of secrecy to correspond with?—They were to correspond with Mr. Downie.

Cross-examined by Mr. *Hamilton.*

I wish to know Mr. Fairley, did Mr. Watt at any time say to you he had any intention of mastering the soldiery any where, of making himself master of the soldiers? you mentioned in the former part of your deposition you had some apprehension about the soldiers, and Watt said he had no fear, and he conceived there were a great many friends, and repeated it. I wish to know whether Watt expressed himself so that he proposed the soldiers should be got the better of.—I do not recollect his ever saying any thing about getting the better of the forces.

Mr. *Erskine.*—I think he said he made the tour of those different places without any instructions from Mr. Watt, but merely of his proper motive I wish to know if you have not sworn this?—He gave me no instructions.

You said you had no instructions to go to all those places?—I just went and told them to correspond with Mr. Downie.

Dr. *Forrest* sworn.

Mr. *Anstruther.*—Where do you live?—In Stirling.

You are by profession a Surgeon?—Yes.

Do you know a person of the name of Fairley?—A person of the name of Fairley called upon me some time ago, I am not absolutely certain. I think about the beginning of May last, I think Fairley called upon me then.

Mr. *Anstruther.*—Give the answer to the question Dr. Forrest.

Did Mr. Fairley produce to you any written or printed papers?—A written paper he produced, after talking of some little matters of indifference.

In what manner or character did Fairley introduce himself to you?—He said he was desired to call upon me by a Mr. Bell of Edinburgh.

What was the general purport of the conversation?—I cannot recollect at this distance?

Did he tell you for what purpose he came to Stirling?—I think he mentioned it was with a view to show in what situation the society was.

You mean the society of the Friends of the People?—The Friends of the People, my lord.

Did he show you any written paper?—He gave me three copies, of the number I am not absolutely certain, I think three, and a letter, a printed letter; I think it resembles this very much.

Look at that.—And that likewise.

The papers he gave you were destroyed?—Yes, I destroyed them and the copy of the letter, and the copy of the regulations I gave to one Douglas, those that remained were destroyed by my friends.

Now, did he show you any written paper?—Yes.

Recollect as near as you can, not the words, I do not want them if you cannot exactly state them, but state as well as you can, the purport of the written paper he shewed you.—I cannot pretend to state the real purport, I will state the general purport of the paper.

What was it about?—He mentioned that some money was wanted. I think he mentioned Mr. Skirving and some other sufferers in the cause of freedom, and wished the society would endeavour to procure something for that purpose.

Mr. *Anstruther*.—That is not the written instructions, but conversation; I want you to state the contents of his written instructions.—There is nothing particular that I can recollect of his written instructions, except it be one part of his instructions.

Speak out, and state that part of his instructions you do remember.—Why I am not absolutely certain of it. That there were to be collectors of a certain number, whether fourteen or not I cannot say, and they were to be provided with————.

What?—I cannot say, it was a blank.

What did you say?—Provided with, or provide themselves with.

Jury.—Who were to be provided?—The collectors or the people, I do not recollect exactly which.

Mr. *Anstruther*.—Provided with what?—I did not see any thing.

Was it a blank?—Yes, it appeared to me a blank.

Now, Dr. Forrest, what conversation had you with Mr. Fairley on that subject?—I do not remember the conversation particularly; I am ready to answer any question so far as I know, but I cannot pretend to state the whole of a conversation I do not particularly remember.

What was the import of Fairley's conversation with you?—The import seemed to me to be to know in what state Stirling was, and to procure money for the relief of those that suffered in the cause of reform.

Did it appear to you to be proper or improper conversation?—I do not know whether I am a proper judge or not.

How did it strike yourself; was it any thing about arming?—I do not recollect that any thing about arms was mentioned.

What occurred to you at the time to be the meaning of that blank?—Am I here to state facts I positively know, or fill up that blank with what I conjecture, or not?

Lord President. The meaning of that conversation, you are bound if you know it, to explain. [No answer.]

Lord Justice Clerk.—You must have had some idea at the time, tell the Court and jury what it was.

Did you ask Fairley what that blank was?—I really did not, I was rather adverse to asking him any questions about it.

Why were you adverse?—It seemed a little odd there should have been any blank.

What construction did you put upon it?—I fancied it might be something that might not be proper for me to investigate or inquire into.

Lord President.—What do you mean by that something?—I suppose, had it been a proper thing, it would naturally have been filled up.

Did you suppose it was arms?—Yes, my lord, I did.

Why did you not mention it before?—I thought I was not to give any conjectures.

Mr. *Anstruther*.—You have told me you supposed the blank was to be filled up with the word arms, what did you say to Fairley upon that?—I do not recollect immediately what passed.

Lord Advocate.—It having occurred to you this blank meant arms, did you or did you not prohibit Fairley to proceed any farther?—It was mentioned to him. I believe I mentioned it to him myself. I did not wish to have it in our power to injure any one; but he should be cautious of what he said.

Now, sir, did Fairley accordingly stop upon that caution which you gave him?—I do not remember what particularly followed that.

Did he ask you any thing with regard to the number of friends in Stirling or its neighbourhood, or with regard to the friends in whom they could place any reliance?—I am really not certain whether he did or not.

Then, did Fairley mention to you any thing with respect to pikes being manufactured or provided in Edinburgh?—I do not recollect the word pikes was mentioned.

Arms of any kind?—Arms, I do not recollect.

Weapons?—No, my lord,—he made something of a form like one of these upon a bit of paper.

Say that out to the jury, I hope you are not concealing the truth?—It was something like a soldier's halbert; we were talking about an invasion, or some such thing, and we were asking about such things for the purpose of defence.

And he drew something like this, upon a paper upon the table?—Yes.

After he drew that instrument, what did he say farther; did he say any number of those were provided or providing; and where were they so providing?—I do not recollect any particular number; if I recollect right, he said he knew some person who could procure instruments of that kind.

Did he mention the name of the person, or place where he resided?—He did not mention the name of the person that I recollect.

Did he convey to you, or did you understand where that person resided, from Fairley's conversation?—The idea I had at the time, was, it was somewhere about Edinburgh; I cannot pretend to give it positive; it was my conjecture.

Mr. *Anstruther*.—Now, Dr Forrest, did Mr. Fairley remain with you after the company separated?—Yes. He slept in my house.

Now, I want you to tell me what conversation passed between you and Mr. Fairley, after the company separated?—Very little. It was about midnight, and I went very soon to bed.

Did he say any thing about collectors?—It was mentioned; I am not certain whether it was mentioned in the printed or written instructions.

Did Fairley say any thing about them?—He mentioned something about them.

Did he say any thing to you; and I desire you to recollect, that you are a person in a considerable situation of life, that you are speaking in a great audience, who hear you, —and above all, upon your oath; answer this question distinctly, did Mr. Fairley or not, say to you any thing relative to a rising of the people, in any way whatsoever? Now answer that question distinctly and plainly.—Something was stated to that purpose; but whether he asserted it was a thing agreed upon; or as a thing that might possibly be done, or as a thing that might happen, I cannot say upon my oath.

Now, did he, or not, say any thing to you, respecting disarming the soldiers?—That was mentioned.

Whom was it mentioned by?—If I recollect it was Fairley.

Now, what was mentioned about disarming the soldiers?—That, my lord, I have heard so frequently in other places, and in the common conversation of the day, I cannot pretend to say the particulars Fairley related; but it occurs to me, he mentioned that circumstance about disarming the soldiers.

Who was to disarm them?—I do not know whether he said that it could be done, by taking their arms while they were absent, or in the night season; I am not absolutely certain of it.

Who was to do it?—He did not state who was to do it, if I recollect.

Was it the Friends of the People, or was it not?—He did not mention the Friends of the People.

Was it the people that sent Fairley there, or not?—He did not say.

Did you understand, from the conversation that you had with Fairley, that this plan, such as it was, was to be effected by the people who had sent Fairley there?—I cannot say, upon my oath, whether it was an agreed plan.

Lord Advocate.—That is a different thing.

Mr. *Anstruther*.—I do not ask whether it was an agreed thing or not—or whether a thing that might be done—or was to be done —if it ever was done who did you understand it was to be done by—Did you not understand if it was ever done, it was to be done by the persons who sent Fairley there?—Perhaps.

Do not you tell me perhaps—was that your idea?—Yes, my lord.

Did Fairley tell you any thing or not respecting imprisoning certain people at Edinburgh?—So far as I recollect he mentioned some people were to be put up; but he did not state names as far as I recollect.

But some people were to be put up— to be imprisoned?—That is what I meant.

Whom were they to be put up by?—I suppose the same people that were to seize and take the soldiers arms.

Did you understand from the conversation this was to be done by the people who sent Fairley to the country?—Yes, my lord.

Did Mr. Fairley tell you any thing—or say any thing to you about certain people in Edinburg repenting of their conduct?—Yes, my lord—that probably some would repent—or regret their conduct—or some such words.

Now if I understand you—were not those people who were to be made to repent their conduct the people that were meant to be put up?—I understood so.

Certainly it would have been much better for a gentleman in your situation of life to have told this story plainly, than to have had it screwed out of you in the manner it has been. I ask you now, whom Fairley desired you to correspond with?—I think he mentioned, what money was to be collected on the behalf and relief of suffering friends, was to be sent to a Mr. Downie.

Now, I ask you again; and I desire you to recollect, what it was Fairley said to you with respect to collectors; or what their duty was to be, what they were to do? Were they to be for every fourteen or fifteen members the society consisted of?—Yes.

What were those collectors to do over these fourteen or fifteen?—He did not state what they were to do.

Were they to collect nothing but money?—He did not say any thing else but money.

Upon your oath were the collectors to command the people whether they were to rise or not?—He did not say so.

Did you understand that from him?—I had that idea.

Did you gather that idea from the conversation you had with Fairley?—Yes, I did.

Mr. *Anstruther* to the Jury.—He gathered the idea that the collectors were to head and command the people when they did rise, from the conversation with Fairley.

Had you no other conversation about arming?—None that I recollect.

What led to the conversation between Fairley and you, upon which Fairley drew the plan of a pike upon the table?—The subject we were talking of was, the prospect of an invasion.

Had you any conversation about a convention?—The convention was mentioned.

What was said about a convention?—I do not recollect; there was some talk about it; I cannot recollect it.

Was it that there was to be a convention or none?—They expected there was to be a convention.

Where was the convention to meet?—It was not known.

Was it to meet in Scotland or England?—I do not know.

Had you no conversation about it?—Yes.

What was it?—Little more than what I have told you.

You have told me nothing yet; you have told me you had a conversation about a convention; what was it?—It was said a convention was to meet, but no time nor place mentioned.

What sort of convention was it, was it of the Royal Burghs?—It was a convention similar to that which met in Edinburgh, of the Friends of the People.

You were a member of that convention?—No.

You were a member of the society of the Friends of the People?—Yes, I was.

Cross-examined by Mr. *Hamilton.*

Pray, was it your own conjecture, or did Fairley tell you there were concerted measures taken; that it was absolutely a fixed matter there was to be a rising here?—I gathered that from the purport of his language.

What did you gather?—That the people who were provided with such instruments might defend themselves in case of an attack.

That was the conjecture you gathered from the conversation of Fairley with you?—[No answer.]

Mr. *Anstruther.*—Did you or not, from the purport of Fairley's conversation, gather that there was to be a rising of the people, and seizing the soldiers arms?—Yes.

Did you ever see a circular letter signed "T. Hardy?"—I do not recollect it.

Did you ever see that letter, or a similar letter? [showing him a letter.]—No, my lord, I never saw it.

I want now to read this circular letter, which has been proved by witnesses, and is also proved to have been carried by Fairley round the country. It is the printed circular letter from the Committee of Ways and Means.

"Fellow Citizens;

"At a time when power seems to be making such rapid strides amongst us, while the friends of freedom are persecuted and hunted down on every side, and the genuine principles of the constitution repeatedly violated by those who, at the time they are professing their attachment to it, are aiming the secret blow which undermines it, the friends of peace and reform in Edinburgh call upon their brethren throughout the kingdom: we call upon you to warn you of your danger; we would remind you of the present melancholy state of affairs, our commerce diminished, our manufactures drooping, the industrious poor wanting bread, and the mingled cries of the widow and orphan assailing the ears of heaven! These, these are only a part of the cruel effects of the most disastrous and bloody war, the end of which is wrapped up in a gloomy obscurity, which has scarcely one ray of hope to penetrate or illumine: in the mean time, we behold armed associations forming in different parts of the country; we see the partial selection of citizens, who are entrusted with arms, and shudder in contemplating what may be the motive of this alarming and novel procedure.

"Under these circumstances, what is our resource? Citizens, there is but one thing that can rescue us, a complete reform in parliament. Let us not be awed into a servile submission by any illegal artifices. Let us not sink before the blast of oppression, but let us unite firmer than ever, and the number of voices that call for redress of our grievances shall yet be heard; but never let us relinquish this great work.

"Remember, that till we are fairly represented, no check can ever be opposed to the strides of power; but we may be crushed beneath its weight, like a worm beneath the foot of the passenger.

"In the mean time, we send you a few rules, which are drawn up for the use of our own societies; we recommend them to you, and hope they will be equally serviceable. A committee of union is appointed here, to express the united wishes of the several societies; and a sub-committee, which is called the Committee of Ways and Means, as treasurers for the united societies, and a centre of union for all friends in Scotland. Through their medium, directions and instructions will be given. The money put into their hands will be accounted for, and disbursed in such a way as shall be most calculated to promote our great cause. If, therefore, you have any sums collected beyond what your immediate exigencies require, or if you can collect any among your friends, though they should not be members of societies, you are requested to remit the same to Mr. Edinburgh, who is appointed to receive the several sums for the committee.

"We should also wish to be informed of the number of friends which you have, on whose patriotism you can rely with the most implicit confidence, and who you are sure will spare no exertion whatever in promoting the great cause in which we are engaged.

"We would thank you to communicate the best method of making our mutual sentiments known to each other, and the person to whom our letters may be addressed with the greatest safety. Direct your letters as above, for Mr. We beg for an answer with all convenient speed, and remain, your brethren and fellow citizens,

"The Committee of W. and M."

Which means Ways and Means.

Mr. *Anstruther.*—We will read a paragraph or two of this paper, called "Fundamental Principles or Regulations of the Societies;"

the two first regulations after the introduction.

"FUNDAMENTAL PRINCIPLES OF THE SOCIETIES."

"The Committee of Union is composed of persons appointed by the people to look after their interest; and are consequently amenable for their conduct to the people. Therefore the people have the power of deposing by means of a petition to the President of the Committee of Union, and by him reported to the societies for misconduct in any of their representatives.

"Second, As representatives, the Committee of Union are invested with every power their constituents can claim; the will of the constituent at the appointment of his representative is, that he watch over his interest as a member of the community, but the will of the constituent is the constituent himself. Therefore if a representative is attacked in the discharge of his duty, his constituents are bound by nature, reason, and honour to defend him."

Mr. *Anstruther*.—I would call your attention to the appointment of collectors, and particularly a Committee of Ways and Means.

"Each society shall appoint one or more persons, the most active and intelligent to be collectors of money, and each of those collectors are to have the superintendance of fifteen or twenty persons, whom they are enjoined to sit as oft as their time may allow. What money they may collect is to be delivered to the treasurer of their different societies every week.

"2nd. Such collectors are permanent, unless disqualified by inattention or otherwise. They are to meet with the Committee of Ways and Means to report progress, once every three weeks.

"*V.—Of the Extent of Delegation.*

"1st. The election of delegates, to the Committee of Union, takes place on the first Thursday of February, May, August, and November, annually.

"2nd. Each society shall send a delegate for every twelve members to the Committee of Union, with a letter, signed by the president and secretary, for the time being. How soon an addition of twelve is made to any society, that society is entitled to send an additional delegate. But no society, however numerous, can send more than three representatives.

"3rd. The powers of such representatives shall continue only for three months, at which period, they must either be re-elected, or others chosen in their room.

XVI.

"1st. The societies shall adopt such regulations, and adhere to such instructions as the Committee of Ways and Means may think proper to issue, after being sanctioned by the Committee of Union.

"2nd. No member shall introduce religious topics into debate, nor motion for prayers to be said, either at the gathering or dismission of the societies, because every thing that tends to strife and diversion must be avoided.

"*Laws relative to the Committee of Union.*

"1st. The Committee of Union shall meet once a week and elect a president every meeting, according as their names stand in the roll. No member is to absent himself, without assigning satisfactory reasons.

"2nd. The secretary shall continue in office three months, during which period, he has the keeping of the books.

"3rd. It shall be eligible, in any person, properly delegated from any part of the three kingdoms, to be members of this committee. —But no foreigner can be admitted.

"4th. No delegate shall send another person in his room, when he is prevented from attending himself.

"5th. Both the president and secretary are subject to the same laws that regard the president and secretary of societies.

"6th. None is allowed to speak in the discussion of any question but once, unless to explain.

"7th. The roll is to be read by the secretary at every meeting, so soon as the president takes the chair,—which he must do precisely at eight o'clock, after which the minutes of the preceding meeting are read, and the order of the day called.

"8th. The Committee of Ways and Means must report progress once a week.

"9th. No member is allowed to accuse or make any injurious reflections on another, neither in the Committee of Union, or in the societies, without first submitting the grounds of his accusation to the Committee of Ways and Means, and they to report to the Committee of Union, if, upon examination, they see sufficient reasons assigned.

"10th. The name of the accuser is not to be made public, unless the Committee of Ways and Means consider the grounds of accusation worthy of the attention of the Committee of Union.

"11th. Disinterestedness, condescension, and affection to one another, must prevail, not only amongst the members of the Committee of Union, but amongst all the societies.

"12th. Heroism, and magnanimity of soul must be cultivated, and every one must endeavour, in a prudent manner, to vie, who will be most instrumental in forwarding the glorious cause;—for, independent and enlarged minds give honour and preference only to merit.

"*Laws relative to the Committee of Ways and Means.*

"1st. The Committee of Ways and Means is permanent, and the members of it have the power of expelling any one or more of its members, for misconduct or inattention.

"2nd. They have the nomination to any vacancy in their own body, also a discretionary power to meet where, and when they please.

"3rd. It shall consist of no more than seven, nor of less than four persons.

"4th. The president and secretary of the Committee of Union, shall examine the money transactions of the Committee of Ways and Means, once every four weeks."

Robert Orrock, sworn.

Mr. *Dundas.*—I think you are a smith?—Yes.

You live at the Dean?—Yes.

You are a member of the Water of Leith Society?—Yes.

And I believe, a member of the Committee of Union?—Yes.

And also a member of the Convention?—Yes.

Now Robert, recollect yourself, do you remember being present at the Committee of Union, about the beginning of May, when they talked of sending arms into the country?—No.

You do not recollect that?—No; I do not.

When did you first hear about arms at all?—It was before that.

At what time was it?—I dare say it was in March. I suppose it was about the latter end of March.

Where was it?—It was in George Ross's.

About what time in March was it?—I suppose it was near the end of March.

Do you recollect who was present at George Ross's, when this conversation took place?—The first time that ever I heard it mentioned, was at a reading of the newspapers, when where present, Mr. Watt, Mr. M'Ewan, and Mr. Downie, I believe.

Do you recollect what was said at that time? tell us as near as you can remember, the sense and purport of the conversation.

The sense of the conversation was,—it was in the news about an invasion,—they began to speak about it, and they were a saying, that there were arms come to the Goldsmiths-hall gentlemen;—that was the sense, I believe, to the best of my recollection.

Any thing more said to the best of your recollection, Robert?—Any thing more?—Yes—the next thing I heard said, but I could not say positively who it was that said it,—We had better apply for some of them. It was likewise said, that there was none that was for a reform, that need apply, to the best of my recollection.

Do you recollect any thing more passing?—Yes. I recollect of its being said, but I could not positively say by whom,—whether it was Mr. Watt that said, that there was no law in being, that could hinder us from getting arms,—I am not certain.

Now, did Mr. Watt come to you at the Dean, in the course of the month of April, or soon after that time?—Yes.

Do you remember his coming to inquire if you had made a certain weapon?—Yes.

What did he say?—He asked if I had.

What time might that be?—Sometime in April.

What did you say to that?—I said I had.

And what passed then?—He asked me to make one of another pattern.

You showed him one as a pattern?—No; he did not see it.

How did he know what pattern?—He asked, I suppose he was told before I showed him.

What said Watt to that?—He said he thought such a pattern would be better; it was a kind of draft.

He showed you a draft of a different pattern?—Yes.

What did he say?—He asked me to make one, and bring it in to show him.

Did you bring in what you had made?—Yes.

Where to?—To George Ross's.

Who were there present when you brought it?—There was Mr. Watt, Mr. Downie, Mr. Bonthrone, Mr. M'Ewan, and another man, that I did not know.

What did you do?—I showed them it.

And what did they say to that?—He was looking at it, and asked me.—

Who asked you?—Mr. Watt.

Asked you for what?—He desired me to go out, after looking, which I did. He asked me, before I went away, if I would leave it with him all night, and I said I would, and did so.

When did you see Mr. Watt again?—I saw him that same night again.

And when did you see him, after that again?—I do not know, but it was at George Ross's I saw him after that.

Do you remember Mr. Watt coming to your shop at the Dean, a few days after that?—Yes.

Do you remember it?—Yes.

How long after that might it be, speaking to your recollection?—About the first of May,

He came to your shop at the Dean, and what did he desire you to do?—He desired me, that night at George Ross's, to make a few of them.

A few of what?—A few of these weapons.

These cross pikes?—Yes;—a few, without any number.

Did he desire you to make any other sort of pike?—Yes.

How many of that other sort?—He said two or three dozen.

Did he ask you how many you could make in a week?—Yes. Me, and my two men.

What did you say?—I said fifty.

Did you see Mr. Watt sometime after that?—Oh! but there was more passed then.

Tell all that passed.—When he said how many could I make in a week and my men, I said that quantity but I said possibly none; oh, said he, I am not upon that; that is not my meaning; I took it he conjectured he had asked me the price; and I was really considering at the same time he was calculating the price what I could afford them at; because,

when I told him with respect to the price, —possibly I might make none.

Was there any thing else passed?—He did ask me to make two or three dozen of each kind.

Now, you saw Mr. Watt sometime afterwards; did you not?—Yes. And he likewise spoke, and asked me, if I could get any sticks for them; I said, I dare say I might; that I could.

Did any thing more pass at that time?—I do not recollect.

Do you recollect Mr. Watt coming to inquire at your shop afterwards, if you had made any progress in your work?—It was the day he was inquiring whether I had made any progress, in George Ross's. He asked me to make a few, and then, when he came, he asked me what progress I had made.

Do you remember receiving a message from Watt, by a person you did not know?—Yes.

What message was then brought to you?—He was twice there—When he came first, it was asking, if there was something done, which I did not like to do at that time, when Mr. Watt was out with me; I told him I had not made any, for there was one of my men away; he said that was a pity, and he asked me, whether I could get one; I said I supposed I might; I had not been in the town; —I did not say he was to seek a man;—but Mr. M'Ewan, some days after, said, Mr. Watt had a kind of a man for me; but I never saw Mr. Watt, nor did he tell me that he had.

I ask you, what the message was, this unknown person brought you from Mr. Watt?—[No answer.]

Court.—How do you know it was a message from Mr. Watt, if you did not know the man?—[No answer.]

Lord Advocate.—How did you know this person came from Watt?—He told me.

Mr. *Erskine.*—That is hearsay.

Mr. *Anstruther.*—Let us ascertain the delivery of the message; the man is not far off, and he will tell you from whom he received it.—He was asking me about making the instruments; if I had got any of them ready; I said they were making.

Who was that person?—it was Martin Todd.

What message did Martin Todd bring to you?—It was asking me what I had made, or got made, or was I making them; that was his first message; I told him, I was making them.

Whom did he say he brought this message from?—From Mr. Watt.

Whom was the second message from?—The second message was showing me two weapons.

Look upon the table, and see if you can see one of them?—I see one of them.

What did he tell you?—He desired I would make mine in like manner;—I said I would not, and if I had known it, I would have made none of them.

Why would not you make them of that sort, Mr. Orrock?—I had a little more alarm in myself at that time.

Now, what was your alarm for at that time?—I can give you that;—I did not at first know how many there was of them.

When did you take the alarm?—It was when with him, William Brown came out to me.

Who was he?—A smith.

Where did he live?—He lives at Goosedub.—I say William Brown came out to me, and asking me; says he, you are making so and so; I was at a meeting of the Friendly Society that night; and he sent for me out, and he asked me, if I was making so and so for Watt; and then asked me, what would we do for sticks;—and I said, what was to hinder us to get sticks? He said there would be thousands wanted.

Mr. *Anstruther.*—I am desiring him to explain the cause of his alarm. Why were you alarmed?—Because thousands would be wanted in the first place. I am telling you when Watt spoke to me, he spoke in no sort of secret way, but very open. William Brown seemed all in hidlings.

Why were you frightened, Robert? you know, if thousands of them were wanted, you would have more trade.—It was not for that, because, if there had been thousands wanted, I could make thousands as well as fifty, that did not alarm me in the least.

What did alarm you?—I will give you that, because, in making them, I did not like it being in such a hidling concealed manner; I thought there need not be so much hidling.

How many of these pikes did Watt order from you altogether?—Mr. Watt said, to my knowledge, you can make three dozen in one week, and then he came to five dozen.

Did you ever hear any thing about their being for the top of a gate?—Yes.

Now, who told you any thing about their being for the top of a gate?—Mr. Watt. What did he say?—He said, what would I say when I was making them, supposing none of them finished? what would I say to inquisitive people that would be asking of me? I answered I do not know.

What did he then say to you?—That I might say they were for the top of a gate or a railing.

Did you ever see such things as these upon the top of a gate?—I have seen something like the straight ones.

Did you ever see the cross ones on the top of a gate?—No.

Did you ever see any of the cross-ones upon the head of a halbert?—Yes.

Was there any thing said about laying them by?—He said, I might lay them by or put them by as soon as made.

Did not you think it very odd that he should tell you these were for the top of a gate?—No, I was never much alarmed at that.

What were the sticks for?—[No answer.]

Had you an order for any more of these than five dozen?—I had no more.

You got alarmed about them?—Yes.

Why were you alarmed? what purpose did you think they were for, when they were bespoke?—I thought they were defensive weapons for the country in case of invasion.

What did you think?—I did not think there was occasion for any secrecy.

Did you not think they were for another purpose?—I did.

Where were they to send the pikes?—He did not say.

He never mentioned any number? who was to pay you for these pikes?—Mr. Watt, I knew no other, I suspected him to be the paymaster.

Were you ever told somebody else was to be your paymaster?—I was by Mr. M'Ewan.

And whom were you to be paid by?—By Mr. Downie.

Did you not think it a very odd thing pikes should be ordered by one man and paid for by another?—That was part of my reason, as I told you before, for my being alarmed.

You thought it an odd thing that pikes should be ordered by one man, and paid for by another? who was to get those pikes?—I do not know what he intended, but he did not say to me who was to get them.

Did you ever take home any pikes?—Home! where.

To Mr. Watt's?—I never did.

What became of those which you made? were they seized by any sheriff officer?—Yes.

Were you taken up at the same time?—Yes, there were some in the shop that were not finished.

Were all that were in your shop got?—No, they were not all found.

Some of those on the table are of your making?—Yes.

What became of those that were not got?—That is what I cannot tell.

Robert, were you a member of the Committee of Union?—Yes.

Where did it meet?—It met in George Ross's.

What was the purpose of that Committee of Union?—There was no other purpose than meeting and getting news from other societies; and there was to be a convention; and the getting up money for the delegates that were to go to it.

Lord President.—He said all in his shop were not found?—I know certainly they were not all got. I came in along with what was got.

Did you know where the rest were?—The rest were just in the shop.

Were they all open in the shop?—There were none hidden.

How came they to take some and leave others?—Because they were not in the same place.

How came they not to be in the same place?—They were lying under the vice-board. Always when we soften any iron, we shoot them in the ashes, and there were two or three of them lying in the ashes, and the rest were below the vice-board. I will give you all candidly.

Now, you say, this Committee of Union was to choose members from another committee to collect money for them?—No, I understand it was always in the other committee; they were leading men, and there was money given; they got 15*s.* from us.

What was that convention to do?—I never heard it was for any thing but to meet for universal reform.

Now, Robert, did you ever hear of any Committee of Ways and Means?—Yes.

Do you know of any Committee of Ways and Means?—Yes.

Do you know that Watt was a member?—Yes.

Do you know that Downie was a member?—Yes.

Now, Robert, who was to make the sticks for these?—I said I could get them made by different persons; to the best of my recollection I mentioned Mr. Black.

How many sticks were to be wanted?—I was to get sticks for as many as I was to make.

Did you ever hear any thing about some thousand sticks wanted?—Yes.

Then, I believe you were determined not to make any more pikes after what you had heard?—Yes.

Why did you determine so?—I thought it at first was not for that intent, and I began to be alarmed as to the hidlings of them. I could not positively say what they were for.

Did you not begin to be frightened because you thought a few pikes might just as well get the end you had in view, as a petition?—I never had that in view.

You began to be frightened?—I did, because I did not know what use he intended to make of them.

Did Mr. Watt ever give you any orders for pikes before?—Never.

Did ever any other body give you orders for pikes?—No.

Did you ever know any other body that dealt in that manufacture?—No.

Now, Robert, you said something about a pike which you had made before Mr. Watt bespoke this of you?—Yes.

What has become of that?—I do not know, it was left with Mr. Watt.

That was the pike you left with Mr. Watt the first night?—Yes.

Who employed you to make that?—I did it immediately myself. I told you that in my first declaration.

I know nothing of a declaration you made any where but here; who employed you to make that pike?—Nobody.

You made it for yourself?—Yes, when they were speaking of arms, I said I would make arms for myself.

Mr. *Anstruther.*—In the Committee of Union, there was a discourse about making of arms. He told the committee he would make arms for himself; Watt wanted to see a pike he had made—he saw that, and employed him.

Watt saw the first pike you made?—Yes.

Cross-examined by Mr. *Hamilton.*

You said Watt told you, you might say they were for the top of a gate.—Yes.

How did he express himself, did he seem serious or in jest?—No, he did not seem serious; he did not say they were to be made in a concealed manner, but just to tell any officious person they were made for the top of a gate.

When you are making any thing in your shop, is it common for you to say it is made for one thing when it is made for another?—When a man comes and asks such questions, I call it fishing—that I thought they had very little business with.

Is it the usual direction of those who employ you, to tell those who ask you about it, that you are making such work for one purpose when you are making it for another?—No, sir.

Mr. *Anstruther.*—He has never said people gave him that direction.

Mr. *Hamilton.*—Do you sometimes get directions from people that employ you to say things are made for one purpose that are made for another?—To inquisitive people I have, in certain things; but it is not common nor a customary thing.

Martin Todd sworn.

Mr. *Dundas.*—I understand you do not hear easily?—No, I am hard of hearing.

You are a smith are not you?—Yes, sir.

And I believe you belonged to the Calton society of the Friends of the People, did not you?—Yes, sir.

Do you remember receiving a message from Mr. Watt to carry to Mr. Orrock? recollect yourself and take your time.—I remember going with one.

What did you go for?—I went to Mr. Orrock with a bundle and parcel.

For what?—I cannot say what it was.

What did Watt desire you to say to Orrock?—I do not remember any thing material he desired me to say: he ordered me to give him a parcel. I gave it to Mr. Orrock.

What was the parcel?—I do not know perfectly what it was. I believe it was one of these things. [Looking at the pikes on the table in court.]

Mr. *Anstruther.*—We should call that a pike, not a parcel?—But it was in a parcel when I had it.

Was it opened by Orrock in your presence?—It was.

What was the message?—He ordered me to take it back to Mr. Watt with his compliments, and that he was going on with the things as fast as possible.

What things?—The things that were in the parcel.

What things?—Things like this I suppose. [Pointing to the weapons on the table.]

What became of them then?—I brought them back, and gave them to Mr. Watt.

There were two messages you carried?—No, sir, not that I remember at present. I do not think there were two.

Mr. *Dundas.*—Did you understand that Orrock was to employ you?—No.

William Brown, senior, called.

Brown.—My lords, I want my liberty I have been kept these four months in gaol.

Lord Advocate.—You are called here to give your evidence, do you refuse it?—No, I do not.

William Brown, sworn.

Do you know a person of the name of Robertson?—Yes.

Did Mr. Robertson ever ask you about making any spears?—Yes.

What did he say?—He asked me if I would make some spears for a Mr. Watt.

What did you say to that?—I said I did not know.

What more did you say?—I do not remember

What did Mr. Robertson say to you?—He said, if I was in the town, I might call upon Mr. Watt and see himself.

Did you ever see Mr. Watt after that? Did you call upon him?—Yes.

And what passed between you and Mr. Watt?—He showed me a spear, and asked me if I would make some like that.

What sort of a spear did he show you? see if you see any thing like that lying upon the table there, turn them over.—I do not see it here.

What conversation had you with Robertson about Watt?—Robertson said he was a merchant.

Where?—Below the New Bridge, on the north side of the High-street.

Where did you call upon him?—When I was down a little below the close.

What close?—Below Carrubber's close.

Now, when you called upon Watt in the close, what conversation had you with him?

I do not think I was above five minutes with him.

Did he show you a pike?—He showed me a pike, but I do not see it, it was like that one, a screw one with a spike halbert-head, a long pike.

What did Watt say?—He asked if I would make one like that, but a little larger.

What did you say?—That I would see and make them.

Did you make any?—I made one.

See if you can see one like it?—I think

that is like it, there was no particular mark upon it.

Did that ferrule screw off in your's?—It was just the same.

Did it screw off?—Whether it be that or no I do not know, I made another one, but then Mr. Watt did not get it.

Did you ever make another screw for it?—No.

Did you ever make another stick for it?—No.

How many of these did Watt order from you?—He set no quantity, he said two or three.

Was it half a dozen?—I took it to be thereabouts.

Did he say half a dozen?—He did not seem to say any quantity of them.

That you call a cross pike, do not you?—I do not know what you call it, but it must be cross, I do not know what name to put to it.

Did you ever see Watt again?—Yes.

Upon what occasion?—I saw him some time afterwards. He came to see if I had made any.

Where do you live?—At the Goosedub. I showed him one similar to it, half done.

Did you ever see him again?—Yes.

Had you any conversation with him about the pikes or spear-heads being ready?—That was when he came out at this time, when I showed this half done. I did not choose to make any more of them of that kind. He said he did not want any more of them. He wanted mole spears straight. I did not know what it was for, and I did not choose to make any more of that kind.

Did you ever ask Mr. Watt what they were for?—No.

How many did you make?—I made only one for Mr. Watt, but there was another that went another way.

Who took that away?—There was a plumber's apprentice took it away.

What was his name?—Of the name of Allan. He took it away at the time.

Allan did not pay you at that time?—No.

Did you ever make any other spears?—He ordered me to make some mole spears.

Did he order you to make any straight spears?—I said that was mole spears. He answered, yes. He wanted some straight spears with a socket like a fork. I said that was like mole spears, and he answered, yes.

Did you ever make any mole spears?—I said, I would make some and bring them in, and see if they were the things he meant.

Did you make any?—I made two, and brought them in.

How many did you make?—Fourteen altogether. The first two I took in, he said, would do.

How came you to make the fourteen?—I delivered the two first to him, and then a dozen of the straight ones.

Were you paid for them?—Yes.

Who paid you?—Mr. Watt said, he was sorry, when I went in, that he had not money to pay me. I told him I was needing money. He said, if that was the case, he would give me a line upon one Mr. Downie; and he would give me the money, as he had it not.

Did you get the money?—Yes.

From whom?—Mr. Downie.

Who was he?—A jeweller in Parliament square.

Where did you carry these pikes?—I carried them to that house where Mr. Watt was.

Look at them, and see if you know your own work?—I have no particular mark, they were of the same shape, make, and size.

Did you ever make a mole spear like that?—Yes.

For whom?—I cannot tell.

As big as that?—Much the same.

How many did you make?—I cannot say, some people make them one shape, some another; some smaller and some larger.

How many cross pikes did Watt order?—He did not mention any quantity, he said two or three. I took it to be half a dozen. I did not understand it to be any quantity.

Did you ever see Robert Orrock?—Yes.

Had you ever any conversation with him about these spears?—Yes.

What was that?—I was at the Water of Leith about some business, and we were speaking about it, and I said I was making some mole spears; he said he was making some for the top of a rail, and some cross ones. I never had seen any of them, but he did not tell me who he was making them for.

Did you tell him who you were making your's for?—I am not very certain whether I did or not.

Did Mr. Watt ever tell you any thing more?—No.

Were you making no more for Watt?—No.

Had you an order for making more?—I do not know that I had, whether he ordered me to make some more or not I cannot be positive to that point; whether he bid me make a dozen or half a dozen more or not I am not positive.

Did any body ever tell you about any orders that Mr. Watt had got from the country?—No.

Do not you recollect that?—No, I do not recollect that.

Cross-examined by Mr. *Hamilton.*

You said you had some conversation with Orrock; did you ever see any pikes of his making?—I never did.

Had you any conversation with Orrock about pikes?—I had some conversation with Orrock about pikes, he said they were for the top of a rail.

Had you any conversation with him about sticks?—No, none that I remember.

Mr. *Anstruther.*—I have just now been informed that one of the witnesses (Fairley) desires he may be called in to correct some part

of his evidence. I shall not say a word to him.

Lord Advocate.—I shall not put a single question to him.

[*Fairley* brought into court.]

Lord President.—Mr. Fairley, a message has come from you, desiring leave to explain something in your former evidence, what was it?

Fairley.—I recollect Mr. Watt saying the banks and public offices were to be seized.

Court.—Can you recollect any other circumstances?—I cannot recollect any other particulars, unless a question was put. I recollect Watt said those who were most active against us were to be imprisoned.

Say that again.—Those who were most active against us were to be imprisoned, and the banks and public offices to be seized; and that couriers were to go into the country.

Mr. *Hamilton*—.When did he say that?—He said there would be more who would start up; and that those most active against us were to be seized; and couriers were to be sent to announce it, or that couriers were to be sent to the country to announce this.

Mr. *Hamilton.*—Have you had any conversation with any person since you went out of the room?—No, sir, I have not.

Who did you understand was meant by "those that were against us," who were to be seized at that time?—That is, those that were against us were to be arrested or something of that kind.

Did he mention any particular person?—I do not know that he did.

Did he mention any particular person?—I cannot say whether he mentioned the magistrates of Edinburgh. I do not recollect any other persons. I think the magistrates of Edinburgh were spoken of. Did he express himself as if they had any particular resentment against them for any particular cause, or why those persons were to be seized?—He did not say.

Explain that: was it expressed as animosity against those persons on account of proceedings inimical to them?—I suppose so.

William Robertson, sworn.

Mr. *Anstruther.*—Do you know Robert Watt?—I have seen Robert Watt.

Had you any conversation with him about spears?—Once.

What was that conversation, Mr. Robertson?—He asked me if I knew any smith that would make those things.

What things?—Spears.

What did you say?—I said I did, I knew one William Brown.

Had you any conversation with Brown upon the subject?—I spoke to him about it, and asked if he would make them.

Did you do that by Mr. Watt's desire?—No.

Now, what conversation had you with Brown upon that subject?—I asked him if he would make them.

What did Brown say?—He said he was not very sure at that time.

Had you any other conversation with Watt about it?—Yes, once he asked me if I had spoke to Brown.

What said you?—That I had.

Spoke to Brown about what?—About spears.

Did Watt tell you what those spears were for?—No—he did not.

Did you ever ask Watt what they were for?—No, I never did.

Did it not strike you it was an odd thing a man in Watt's situation should be ordering spears?—I did not think any thing about it at that time.

Did you think any thing about it since?—No.

Had you no conversation with Watt about it at all?—No, I did not ask him any question at all.

I believe you were a member of the British Convention?—Yes.

Do you know a person of the name of Skirving?—Yes.

You have written him some letters?—One letter.

Where do you live? What part of the town do you live in?—In Symon's-square.

Now, sit down and read that letter quietly. Tell me first whether it is your hand-writing?—It is. "Edinburgh, April 7th 1794."

[The witness looked over the letter.]

Lord Advocate.—Did you write that letter of the date it bears?—Yes, I did write that letter.

Now, what was the number of your Society at the dispersion of the British Convention?—I do not recollect particularly what the number was.

About how many?—I could not really say how many at that time.

About how many Mr. Robertson? You could tell Mr. Skirving, you might as well tell me.—I could not be positive how many at that time.

Was it from thirteen to twenty?—It might be twenty, or between thirteen and twenty.

Did it increase much after the dispersing of the British Convention?—It increased very fast.

They increased very fast after that? to how many did they increase?—They might be near one hundred.

I believe your school was the place where the British Convention met the day after it was dispersed?—No, it was not.

It met in your neighbourhood?—Yes.

Did it meet in your school afterwards?—No, it never did.

The Friends of the People met in your school?—A society met.

That is the society that increased so much?—Yes.

Now, what was the object of that society?

—I know of no object but to obtain a reform.

What sort of a reform?—Universal Suffrage and Annual Parliaments.

Was there any obstacle to the prosecution of that end?—I do not know. There was a meeting.

Was there any obstacle to it?—There was no obstacle, but a petition to parliament.

But what was the obstacle that stood in the way of it?—I did not see any, but to petition parliament.

You could tell Skirving, now, you may as well tell me?—I could not say what was the obstacle.

Did you think that poverty was the obstacle?—They could not get their petitions made up so soon owing to that.

Did you ever hear of a Committee of Union?—I have heard of it.

Were you ever at it?—I never was at it. I know it was a Committee of Union.

Were you ever at the General Committee?—Yes, it went from January to March by the name of the General Committee.

I think you were secretary to that General Committee?—I never was secretary except one night.

And Stock was president or preses that night?—I do not recollect.

Do you recollect any motion made that night? See if you remember that motion made in the committee?—Yes. I remember there was some motion of that kind.

There was a motion to that effect?—Yes.

Was that motion carried?—Not that night. It is not in my memory.

Who proposed it?—I cannot say who proposed it first.

Was it proposed by a person whose name is there? read that, and tell me whether it was proposed by the person named there?—I do not know whether it was Mr. Watt that proposed that motion that night or not.

Was he there?—I think he was, but I cannot be certain whether he proposed that motion or not.

Mr. *Anstruther*.—It is the paper that has been read already for the institution of that committee.

Did your society send delegates to the convention?—They sent three.

Do you recollect their names?—I think Mr. Stock was a delegate.

Mr. Stock was a delegate from your society?—Yes.

Who was the other?—One Mr. Hardyman.

Who was the other?—I cannot recollect.

Have you ever heard any thing of a Committee of Ways and Means?—I have heard of it.

What was it?—I have heard no more but that there was such a committee.

Now, what was the purpose of that committee to which you sent delegates?—It was to form a correspondence among the societies in Edinburgh.

Do you know of any correspondence in the country with that committee?—No, I do not.

Do you know any thing of one person going to the north and another to the west?—I heard of them going, but did not know them.

Whom did you hear of them from?—I heard of them from several.

Name them?—I cannot name them.

Who were the persons that told you of one person going to the north and another to the west?—I believe I heard it openly in the society; I cannot recollect any person in particular.

You do not recollect, you say, who it was?—No, I do not.

Do you know any thing about greater secresy being observed in your proceedings now, than formerly?—I might have said something to that purpose, it was merely myself, no other person has said it, I could not say but there might be more secresy.

Do not you know that there was?—I cannot answer that question.

[No cross-examination.]

Court.—Should you know Mr. Watt if you saw him again?—Yes, I believe I would.

Look and see if you see him at the bar. Is that Mr. Watt?—Yes.

Mr. *Anstruther*.—Is that the person that gave you the message to Brown?—Yes.

Walter Miller called.

Walter Miller.—My lords, I have some difficulties, before I can submit to be a witness in this trial; when I am called an honest man, and abiding by the laws, I have no objection to give my evidence; but when I have been imprisoned for several months past, it may appear I come here guilty of all the crimes laid to those men; if that be the intention of the prosecutor, I beg he will indict me.

Lord Advocate.—I have no such intention.

Walter Miller, merchant, sworn.

Mr. *Anstruther*.—Now, Mr. Miller, I will tell you before you begin, that you are not bound to answer any questions that tend to criminate yourself. The first question I ask you is, whether that letter ever came to you, by post [showing him a letter]?—Yes, that letter certainly came to me.

How did it come to you?—By post.

Look at it, there is no post mark?—There is undoubtedly a post mark.

Do you know whom it came from?—It is signed by the gentleman that sent it, I suppose.

Look carefully at it, and look at the back of it, then the side of it, do not be in such a hurry.—The answer was to be sent to Ross, Liberty-court.

Was there an answer sent to London?—There was none sent to Edinburgh; there was an answer sent to London, I believe.

Do you believe it was sent? were you at

the meeting that resolved upon writing an answer to it?—Yes, I certainly was at the meeting.

Was it an answer agreeing with the letter or not?—Yes, it was an answer so far that if a convention was called, we resolved to send a delegate.

Did you ever remit any money to Edinburgh for the purpose of the Friends of the People?—Yes, I did.

In consequence of what did you remit it, and by whose directions did you remit it?—Why, I remitted the money in consequence of being appointed treasurer for the society of the Friends of the People at Perth.

How much?—Fifteen pounds sterling.

To whom did you remit it?—To Mr. Downie.

Why was it to be remitted to Mr. Downie?—Because I understood some instructions had come to our place to some person or other to send any money we were sending to Edinburgh to Mr. Downie. We understood he was treasurer of those societies.

What societies?—Societies of the Friends of the People.

What was the purpose of remitting that money?—For relief of patriots, and support of the cause of freedom.

Did not those instructions come to yourself?—No.

Did that letter ever come to you, Mr. Miller?—Yes, it did.

Was it before or after that letter came to you that you remitted the money?—As to that I do not know, but it was a considerable time before this letter came to me that this money was gathered for that purpose.

Was it before or after that letter came to you, you remitted it?—It was certainly after, for no letter came directed to me before I remitted the money.

How were you informed that Downie was treasurer for the Friends of the People?—I told you before some people in Perth got it by word of mouth or letter.

Mr. *Anstruther*.—The letter is signed, "T. Hardy."

Cross-examined by Mr. *Hamilton*.

You mentioned you had agreed in your societies to choose a delegate to send to the convention?—Yes.

Did not you understand in that convention it was their intent to procure a reform by legal means?—Certainly it was for the cause of a reform, for carrying it on.

Did you think or did you suppose the object and intent of that convention to which the delegates were to be sent was, to subvert the authority of this kingdom?—I had no supposition of it at all.

Arthur M'Ewan examined again.

The night when the Committee of Ways and Means met, when Watt told you of the plan you have told us of already, for what purpose did it meet that night?—I do not know what purpose it met for, only it was in use to meet weekly.

Was it not to answer a circular letter that night?—I do not know of it.

Did you ever see a letter signed "T. Hardy?"—No.

Did you ever know of an answer sent to Hardy?—No, never.

Did you ever know of any conversation respecting the mode in which the correspondence between your society and Hardy was to be carried on?—I never heard it till Mr. Stock said he was to do every thing in his power to open a correspondence between Watt and Hardy.

Was it that night the committee met or not?—It was the last night that the committee met.

Was it not that night they were to answer a letter from Hardy?—No, there was no letter wrote that night.

Was not Stock to carry a letter to Hardy?—Not that I know of.

How was that correspondence between Hardy and Watt to be carried on, did Stock plan some mode of correspondence between Hardy and Watt; what passed upon that cocasion?—I could not make it distinct how he was to carry it on, it was to be done in such a droll way, I could not make it distinct; if I recollect right he had a piece of paper, and it was like dividing down this way [drawing his finger down the centre of the paper in a perpendicular line] the aristocrats doing so and so on one side, and the democrats doing so and so on the other side.

Then the correspondence was to be carried on in two columns?—Yes, I suppose so from the mode he proposed that night.

What was the meaning of carrying on a correspondence in such a way?—I cannot tell.

Did it not strike you as odd to be carrying on such a correspondence?—It did, sir.

Prisoner.—May I put a question to that man?

Court.—Certainly.

Prisoner.—You are asked whether or not any correspondence was to take place between Hardy and me, rather than any other person?—I mentioned this, that Stock did say, you wished to have a correspondence with Mr. Hardy, and you could not settle upon a sure plan how you could correspond, and Mr. Stock drew out that model upon which you could correspond with safety. Mr. Stock drew the plan. I thought the design fixed on his part, was to carry on that correspondence, notwithstanding that plan drawn out by Stock. I did not see it, but Mr. Stock drew out the plan by which you should correspond with Mr. Hardy.

Prisoner.—That I did wish to correspond with Mr. Hardy?—That you wished to correspond with Mr. Hardy.

The *Lord Advocate*.—I think it my duty to the Court and jury to state, that we mean to

leave the charge against the prisoner at the bar, upon the evidence written and parole that has now been given to the jury.

Mr. *Erskine* then informed the Court, that only one of the counsel for Mr. Watt proposed to address the jury, which Mr. Hamilton would do, when the evidence for the prisoner was closed. Being desired by the Court to state in general the points to which he meant to call evidence for the prisoner, he stated that in general, he would inform the Court and jury, that Mr. Watt first of all applied to Mr. Dundas, then secretary of state, conveying certain intelligence with regard to the proceedings of certain societies, which appeared to Mr. Watt of a seditious nature; and that he was recommended by Mr. Dundas to the lord advocate both by letter and conversation. This communication with the lord advocate continued from the end of 1792, to the end of 1793, when the British Convention met, whose proceedings their lordships would recollect, were all published in the newspapers; from that time there was no communication with Mr. Watt. Then Mr. Watt became a member of the Committee of Ways and Means, the lord advocate went to London, Mr. Watt would have conveyed such an account of the proceedings, but from the beginning of March to the 15th of May, the lord advocate was in London: Watt when taken up by Mr. Sheriff Clerk, said, he could not say any thing in answer to him till the lord advocate came to town. This is in general the proof meant to be adduced.

Mr. *Sheriff Clerk* called as a witness for the Defendant.

Mr. *Erskine*.—You searched Mr. Watt's house?—Yes.

You found some papers?—Yes.

Did you find any letter from Mr. Dundas to Mr. Watt?—I found one among others.

Did you find this?—I do not recollect any thing of that paper, there is no mark on it.

Mr. Watt was examined before you?—Mr. Watt was examined.

Was he open to you upon the subject?—Mr. Watt was brought up upon the 15th of May, along with the arms found in his house, and was interrogated by me respecting them. He declined giving any explanation, and gave for answer that he communicated with Mr. Dundas and the lord advocate about certain circumstances, he did not choose to give an answer. I told him this would not do, and that these arms were a very suspicious circumstance. I desired to know what use he intended to make of them, when he told me, you will find lying upon my table, an advertisement for the newspapers, intimating that pikes were to be sold by me at so much a-piece. I think it is a laudable thing of me as a merchant in fair trade, and I as a merchant am entitled to do it.

Is that a scroll of a letter to Mr. Dundas?—Yes, it is a scroll of a letter. I brought here all the papers I found.

Mr. *Anstruther*.—What is it they are asking for?

Mr. *Erskine*.—It is a letter to Mr. Dundas we wish to have.

Mr. *Anstruther*.—I have not the least objection to your making use of any letter of Watt's in evidence.

Mr. *Sheriff Clerk*.—That appears to me to be the letter that was the cause of Mr. Dundas's answer.

Lord Advocate.—I have no objection to its production.

Mr. *Knapp*.—It is dated August the 31st 1792.

Mr. *Anstruther*.—That paper as it stands is not, and I believe, cannot be made evidence; it is a paper in Watt's hand-writing, found in his house, purporting to be a letter to somebody; it is attempted to be made evidence by proving that the contents of that letter seem to relate to a letter of Mr. Dundas's found in the possession of the prisoner; that could not in any view of the case make it evidence, all the papers found in the possession of the prisoner are evidence against him, but it is impossible pretended copies of letters, said to be written by him, found in his possession, in his own hand-writing, can be evidence without something more; at the same time, so far from the counsel for the crown, on the present occasion, wishing to press things against the prisoner, or preclude the prisoner from producing any thing he may think tends to exculpate him, whether it be legal evidence or not, that they have not the smallest objection to these being read. I only thought it necessary to state this, not to object to the papers being read which I know not to be legal evidence, but to prevent the doing of it in this case, from being stated as a ground for its being done in another trial.

Mr. *Erskine* to Lord Advocate.—I must call upon your lordship.

Mr. *Anstruther*.—Do you mean to read the letter.

Mr. *Erskine*.—Yes.

Lord President.—You said all the circumstances of the pikes being found, happened between February and May. I understand that was during the ceasing of the correspondence between the prisoner and Mr. Dundas?

Lord Advocate.—Yes.

[That letter read*, dated August 31st, 1792.]

"Although I have not the honour of being known by you, yet from my attachment to the constitution of this country, and of which I have the happiness of being a native, and the fears I entertain of its constitution being

* See Burnett's "Treatise on Various Branches of the Criminal Law of Scotland," chap. xxiv.

subverted; have hereby taken the liberty of laying before you facts which merit your most serious attention. For some years I have observed accounts of associations formed in different boroughs in Scotland for petitioning parliament for the redress of grievances, but knowing the character and comparatively the smallness of the number of those who compose the society at Perth, from a residence there of eleven years at my education, and of those in Edinburgh from a residence of eleven years in business, part of which acting as a clerk to a respectable house, and the remainder on my own account, and from the year 1789, have informed myself of the character of many of those who compose the societies at Glasgow, and Dundee, business, requiring me to be frequently in these and other parts of the country, I was satisfied to find that Perth did from year to year oppose petitions that had no other tendency than to vitiate the morals of the inhabitants, and get into the magistracy, men of weak heads and factious minds; but sir, when I see and hear of societies forming in conjunction with those already mentioned in this city and in other parts of the country, when principles strike at the very root of the British Constitution; I cannot, as a friend to my country, but inform you of their proceedings and intentions; the leaders of these factious clubs have the audacity to go from house to house, endeavouring to enamour the weak in understanding, and to inflame factions in minds by representing to them certain supposed grievances, and enforcing, by suspicious arguments, the evil consequences that will unavoidably result to the nation if they are not speedily redrest; being visited by Mr. William Johnson, the chairman of their committee here, accompanied by another gentleman, I was, after some conversation, invited to attend the committee which was to meet in Mather's Tavern that evening, the 24th current; from a desire of knowing more particularly the nature and tendency of such an association I complied; the only business before them was, the reading of a letter from the chairman of the societies at Glasgow and Perth, and appointing the time and place of a general meeting here; after business was over I proposed to Mr. Johnson and four gentlemen to whom he seemed to pay more than ordinary attention to sup together, to which they agreed; my intention in this was, to learn if possible their secret designs, in which I was in some measure successful, their sentiments on politics were such as astonished me how any reasonable man living under the British government could adopt and have the assurance to express; the ministry must be displaced; government expenses retrenched; none belonging to the treasury should have a seat in parliament. The following expression of one of the gentlemen, in a committee of fourteen, met last night in the same tavern, and received with great applause, will inform you of the secret purposes much better than any language of mine can do. It is a maxim of mine (said he) that a king should be sacrificed to the nation once in every hundred years. These are his own words, for I was personally present at the time; their meaning must be obvious to every thinking mind; they propose to accomplish their hellish designs by pretending moderation at first in their demands and proceedings, and by degrees, artfully to insinuate their dangerous ideas into the minds of their adherents, and when they suppose themselves sufficiently powerful, then to attack perforce the throne and the friends of the constitution; this they think they can do with more ease and safety than even the French; that I might be able to give you as full an account as possible of their proceedings, I attended their general meeting in the Barbers Hall on the 28th instant, where there were present about two hundred persons of various descriptions, a Mr. Clerk in the chair, the plan of organization was laid before the meeting and referred with amendments to a committee, and to be laid by them before the general meeting which is to take place on the 5th of September, as also a letter to Mr. Gray, the secretary to the London Society; as they expect their number to increase greatly: the society to be divided into smaller ones, for the more easy dispatch of business, and their future committees to consist of one or two delegates from each of these societies, they are to put their declaration to the public into the newspapers after it is approved of by the general meeting on the 5th of September; as I could not be prevailed on to subscribe their book of admission, notwithstanding their using several arguments to that effect on three different occasions, they sent me for my conviction and information Paine's Rights of Man, M'Intosh's Answer to Burke, and Flower's publication, expecting that against next general meeting I will subscribe. Be pleased to advise lady Arnston (your mother) not to go to Mr. Elder, the bookseller, shop, to look after seditious books, suffice it to say, that that fellow has at one of these seditious committees where I was present, irritated the risibility of the company at the expense of your's and her ladyship's character; Elder is their bookseller. Thus I have, without the knowledge of any one, done myself the honour of stating to you the proceedings of this dangerous body of men, and the motives that actuate their leaders, that you may have it more in your power to take cautious, vigorous, and effectual measures to baffle their wicked intentions. I trust you will not reveal my correspondence with you to any but such as you can positively rely on, and be assured that I will, with the utmost secresy, inform you from time to time of their proceedings, if you are pleased to honour me with your commands, by addressing to me Merchant, Edinburgh.

"*August* 31*st*, 1792."

Letter read, dated London, 5th September 1792, addressed to ROBERT WATT, North Gray's Close, Edinburgh.

Sir;—I have received your letter of the 31st ultimo, and shall feel indebted on behalf of the public, for any communication you may find it convenient to make to me. I trust the number of evil disposed persons you describe are not great, but it is still necessary to keep a watchful eye over them. You may rest assured, you are perfectly safe in any correspondence you may hold with me. I am, with respect, your most obedient humble servant, HENRY DUNDAS.

Another letter was read, dated Horse-Guards, August 29, 1794.

Sir;—I have the receipt of your's, of the 26th instant, and lose no time in informing you, that having made a distinct search, I do not find, that I am in possession of any one of the letters address to me by Mr. Watt, or the copy of any one of my letters to him; to the best of my recollection, all Mr. Watt's letters were put into the hand of the lord advocate. I am, sir, your obedient humble servant,

HENRY DUNDAS.

To *John M'Ritchie*, esq. Edinburgh.

Lord Advocate sworn.

Mr. *Erskine*.—Your Lordship has heard what I have stated, respecting the communication between your lordship and Mr. Watt; be so good as inform us of it.

Lord Advocate.—In the month of October 1792, Mr. Dundas came to Scotland, and I had repeated conversations with him, during that month, and till his return to London in the beginning of December, with respect to the then situation of this country.—If I recollect right, Mr. Pringle, then sheriff of the county, was present at most of those conversations, the particular subject whereof was about the meetings of the Friends of the People, then taking place in the west country to a great degree, and the general alarm occasioned by these meetings. This was a short while before the meeting of parliament. He mentioned to me, he had received a letter, a short time before, from a man of the name of Watt, a merchant in Edinburgh, he desired me and Mr. Pringle to inquire who Watt was, and whether he was a safe person to have any correspondence with; the result of those inquiries, which were made as accurately as we possibly could, were such as to induce us to put a confidence in Mr. Watt; and from that period to the month of May last, when I received in London, when attending the secret Committees of the House of Commons, information of what had been discovered here, I never apprehended that confidence was misplaced.

Do you recollect receiving any letter from Mr. Watt when you were in Dunkeld?—In consequence of those inquiries we made, on Mr. Dundas going to London, the duty devolved upon me, and I conceived it my duty to carry on a correspondence with Watt and any person that was of the description of Watt. In the course of those inquiries, I remember receiving Watt one night in my own house, when he gave me a variety of information, I do not mean to mention it, nor the names informed against by him, unless he think it necessary. He informed me, that at a meeting in James's Court about the beginning of November 1792——

Mr. *Hamilton*.—I do not ask you what were the particulars of the information that Watt gave you.

Lord Advocate.—He once gave me in writing several informations in regard to the state of those parts of the country in which he had lately been, particularly the counties of Fife, Perth and other places, and one piece of information he gave me, I thought it my duty to transmit to Mr. Secretary Dundas.

What I mean to ask is (I hope with propriety), whether you did not think the information you got from Watt to be from a person you had no reason to doubt?—I stated before that I had no reason to hesitate about the confidence I had placed in Watt, with respect to the information which I transmitted to Mr. Dundas at that period; it was to the following purpose: that a party of soldiers coming from Chatham through England to Perthshire, had been tampered with at several places in England and Scotland, by persons in whose company they had been, to mutiny, and particularly a certain number of them stated, in their march at a certain place in Fifeshire, that if they were called out to suppress any riot, such as was said to have taken place in Dundee, they would not fight or do their duty. I considered this as so material and important that I transmitted it to Mr. Dundas. I received in a few days a letter written by his order, enclosing a letter written by general Fox, then commanding at Chatham Barracks, stating the names of the parties who had left Chatham some time before, and pointing out those who had gone to Perth. I communicated this to the Commander in Chief, lord Adam Gordon; he brought the soldiers to Edinburgh, among them he brought the corporal of a regiment; it was a regiment then serving in India, in which colonel M'Leod was the lieutenant-colonel. Lord Adam Gordon sent to me privately when they were come; I went down to the Abbey, where his lordship and I examined the men separately; and as they completely denied every single particular of the information which I had received from Watt, nothing farther was done upon the subject.

Lord President.—This was when?—This was in December 1792, or January 1793.

Mr. *Erskine*.—Does your lordship recollect any communication with respect to the plan of seizing the banks?—Never; please to repeat your question.

Mr *Erskine.*—Whether your lordship received from Mr. Watt any communication with respect to a plan for seizing the banks while you were at Dunkeld in September 1793?—I was at Dunkeld in September 1793. I do not recollect having received any letter form Mr. Watt, or having seen Mr. Watt, since June or July 1793; it may be otherwise, but I do not recollect it.

Do you remember having seen any letter from him when you were in London?—In February 1793, before going to London, I saw Mr. Watt at night once or twice. I cannot tell the number of times. At that time the trials were going on against Craig and Anderson and other persons of a similar description; Mr. Muir and others were busy at Glasgow, and I heard that a good deal of money was going amongst those people. I thought the money must come from some concealed quarter. I was desirous to know, and I stated, that I was pretty positive it must come either from France or London, and I desired him to direct his attention particularly to that object. In March, about the end of it when in London, I received a letter from Mr. Watt; he stated that he had been in company with certain individuals, their names I shall not mention, unless the counsel desire me so to do; two of them were of that description whom he watched, and whose proceedings he communicated. He wrote me that two of them had given him reason to believe that something of a very serious nature was going on which they were acquainted with, and which they were inclined to divulge, but which they would not discover unless they received a thousand pounds sterling down, or some very large sum I am sure it was. It occurred to me this was not a proposal to which I could listen; I did not suspect Mr. Watt; it occurred to me that the men deceived Watt, and that probably after having received the money (if the money could be given) the intelligence might not be worth having; before I returned the answer, I shewed the letter to the secretary of state, and to the chancellor of the exchequer, and they having both concurred in the same opinion, I returned that answer, and I heard no more of Watt till I returned to Scotland. In the month of May or June, Watt mentioned to me that he had been obliged to accept a bill, on account of these men, of 30*l.* sterling, which he would be obliged to pay. I wrote to a person in Edinburgh to pay that sum, and it was accordingly paid.

Mr. *Erskine.*—Have you any letter written by Watt to Mr. Dundas?

Lord Advocate.—After having received my subpœna, I searched every place where I thought it possible, and ordered my clerk to do the same. I searched every place where I thought any correspondence with Watt could exist. I wished to get every correspondence between us, and there is what I have been able to find.

Mr. *Erskine.*—I should be extremely sorry to take up the time of the Court to read those papers, and the prisoner says he does not wish them to be read.

Mr. *Hamilton.*—The lord advocate has given a sufficient account of the correspondence that passed between Watt and him.

Lord Advocate.—I do not thing I have seen or heard from Mr. Watt since June or July last year; I may have received a letter from him at Dunkeld; if I did it has escaped my recollection completely.

Mr. *Hamilton.*—I shall trouble your lordship with only one question more; whether Watt, in the interviews he had with your lordship, did not ask of you, how he was to conduct himself, and whether he did not conduct himself in the mode that was prescribed for him; whether he had not offered to Mr. Secretary Dundas, to give him the information that should appear to him to be important upon the occasion?

Lord Advocate.—In the way I came to be introduced to him, and knowing I considered him as a person giving information to government voluntarily, of what was going on, I considered him as a man of respectable character, in consequence of the inquiries I had made about it.

Mr. *Anstruther.*—My Lord Advocate, if I understood your lordship right you said, the only information you thought material which you received from Mr. Watt, was that which respected the soldiers which you have mentioned.—Yes.

And that, I understand your lordship to have said, upon enquiry, turned out, as far as you could discover, to be void of foundation.—It certainly did.

Did I understand your lordship right, when you said, that Mr. Watt, in the month of March last, had made an application to you, stating that some persons would make a disclosure, provided they could receive a sum of money?—In March 1793.

That was not accepted?—I wrote to him, declining to do it.

Have you had, to the best of your recollection, any letter from, or any meeting with Mr. Watt since the meeting of the British Convention that met in October 1793?—I mentioned already, I think I have not seen him, nor received any letter from him, since June or July 1793, and I was asked, if I received a letter from him at Dunkeld, to which I gave for answer, that I do not recollect having received any such; but I am positive, I have neither received any information from him nor seen him since October 1793.

Mr. *Anstruther* to the prisoner's counsel.—Do you call any body else?

Mr. *Erskine.*—No.

Mr. *Hamilton.*—My Lord President, Gentlemen of the Jury;—The case that has this day come before you, is one more deserving of your attention, than any that ever, perhaps, was heard within these walls.

Gentlemen, it is a case of perfect novelty; for I can venture to say, that, though near one hundred years have elapsed, since the law of treason in England and Scotland have been declared to be the same (except in one case, relating to the established coinage), the present is the first trial for that crime that has occurred in the criminal annals of this country.

It is a case, gentlemen, of singular importance indeed; for, as it is the highest crime known in society, so it is necessarily attended with the most severe and deepest punishment.

Gentlemen, it is a case of blood, and you are, this day, by your verdict to decide the fate of the prisoner at the bar; you are to determine, whether the gates of eternity are to be immediately thrown open to him, or if he is to be allowed to pass the remainder of his days in peace, till the due course of nature, and dispensation of Providence, shall call him at length to the grave.

I have been appointed, by the Court, counsel for the prisoner at the bar; in that situation, I am bound to do him all the service that I can; and I can safely lay my hand upon my heart, and, as a man of honour, declare, that I shall do him all the justice that lies in my power. It is a duty I owe to the feelings of my own mind; it is a duty which I owe to the profession to which I have the honour to belong; and, above all, it is a duty I owe to the prisoner before you, who has entrusted the defence of his precious existence to my charge. I do not mean to make any apology for my appearance here; but from the anxiety I must feel, in the situation in which I stand, I may perhaps be led into error, in more respects than one. The prisoner may rest assured, that nothing shall be left undone on my part; and I hope that he will pardon me, if, from inability or inexperience, I shall say too little; and I hope, gentlemen, to meet with your indulgence, and with that of the Court, if, from perhaps a laudable anxiety, I shall say too much.

The crime charged is High Treason, an attempt to overturn the government of this country, the most important of all events, as it loosens the bands of society, and undermines all security. You, gentlemen, who live under, and enjoy the blessings of this happy constitution, can you suppose, that any one should attempt to cut himself off from such advantages? where the road to prosperity and happiness is laid open to all; where the lives of the subjects are not wantonly sported with; but where security and stability exist, and, I trust, ever will remain, as the desirable and ultimate object of all our wishes and desires! No, gentlemen, you will, from these circumstances, infer the strongest presumption to the contrary; you will not imagine it possible that the panel, who has been living within the mild administration of this country, should strive to overturn its constitution. It is not a thing you will lightly presume, but, on the contrary, you will require the strongest evidence that can be figured, of such a wild intention.

If I am entitled to lay hold of this, as one general presumption, I am equally well entitled to state another:

The crime, gentlemen, charged in this case, is the atrocious crime of high treason. But, when we look into the melancholy annals of our own history, where the crime of high treason stains even the darkest pages of our criminal records, we do not find that such men as those now at the bar, have stirred the mighty mischief. Often, too often, has the best, the noblest blood of our country, from mistaken notions, streamed upon the scaffold; but never till now, have we heard of men of low pretensions, endeavouring to rear themselves into importance by such unsuitable attempts; such, however, is the person now before you; you know his situation, and you will not easily presume, that he should engage in attempts entirely out of his reach, and which his sphere in life cut off and deprived of all probability or possibility of success.

Gentlemen, the crime charged in the case is not (and I am happy it is not) a direct attempt upon the life of his sacred majesty. Had it been such, I, for one, declare, I would not have appeared as his advocate at this bar; as I now stand, I am bound no doubt to do as much as in me lies, in my capacity as an advocate; but had the charge been otherwise, I could not have so far disguised my feelings; I could not, I avow, have lifted up my voice to defend one who could, either in thought or idea, have meant to attempt the life of that gracious sovereign, whom, in a former period of my life, I am proud to say, I served, in what I shall ever esteem the most honourable of all stations. But the crime charged is of a different complexion. It is a charge of constructive treason, which bears not personally against the sovereign, and which is only brought within the measure and compass of the law, if it is brought at all, by the most artificial and strained chain of argument.

It is indeed said in the indictment, and which was so ably urged and enforced by Mr. Anstruther, who spoke so fully on this case, that the prisoner was guilty of "compassing and imagining the death of the king." Yet, notwithstanding the high expressions of that honourable gentleman, and though he possesses many advantages I can never hope to attain, having the knowledge of every particular of the law of England, and especially that knowledge he has of the subject of this day, which he has urged so forcibly and so well, I shall, nevertheless, be bold enough to exert my best endeavours in controverting the doctrine he has been pleased to lay down.

I shall accordingly set out with what I take to be the law of this kingdom, as to that spe-

cies of treason which falls under the indictment submitted to your consideration.

The indictment is laid upon the statute of the 25th of Edward 3d, wherein it is enacted, "That the compassing and imagining the death of the king shall be high treason;" but where only the imagination of the crime exists, and it can exist only in the mind, it is necessary that it should be manifested in some sufficient manner; it requires a sufficient indication, and a sufficient overt-act, to bring it within the compass or intendment of the statute.

Gentlemen, I need scarce inform you, that by the happy union of this country with England, the laws of England and Scotland, with regard to high treason, are declared to be the same. This is by the seventh of queen Anne, the intent of which you well know. But, gentlemen, I must get you to consider what the import of that statute is; it strikes me that this statute, which declares the laws of the two countries shall be one, has reference only to the laws as established by the statutes which constituted that law. It will be asked me by the bench, as a grand leading proposition, why we argue upon a matter that stands already in so clear a light, the judicial proceedings of a court, and a long train of practice which will establish it? Practice is, no doubt, in general, the rule of decision in the law; but I apprehend, when the ground and foundation of that law, and especially in criminal cases, is a statute or statutes, you are tied down explicitly to the tenor and import of the words of such statutes: "*Judicandum est legibus non exemplis.*" This I apprehend to be the legal rule, and therefore I consider the law of the two kingdoms made one and the same, in so far only as the express enactments could apply in letter and construction. All that was demanded by the enactment of queen Anne was, that the law of high treason, as expressed in the statutes then in force, should be adopted into the law of this country, and no more. More explicitly what I mean to say is this: that this country did not expressly adopt or give complete and full sanction, even to writers I shall afterwards have occasion to mention to you, nor did it give up or implicitly go into cases afterwards regarded as precedents. The opinions of writers upon any science will no doubt be regarded, and the opinions of judges meet with due respect; but you are not tied down by them, you are to regard them if you please, but you are at the same time bound to consider, to weigh well, and use your own judgment and discretion to decide upon the law of treason, as applicable to any particular case which occurs in this country. You are in fact to be bound by the words and spirit of the statutes, and not to regard all the former precedents quoted to you as the established law, not of this country but of another, whose statute I admit you have adopted, but whose opinion upon that statute you are at liberty either to choose or reject. In short, so far as the statute 25th of Edward regulates the law of high treason, it is to be regarded; but you adopted only that statute, and not the whole of the law of England, opinions and precedents upon that important branch of criminal justice.

If I am right and successful in maintaining this legal proposition, there is an end of the present question. For, if the words only of the statute are to be regarded, as to compassing and imagining the death of the king, what must be the result? Must not the facts charged have a direct tendency to endanger the king's person? Must they not expressly indicate the worst of crimes?—the endeavouring to seek or procure the death of the king? If that was the case, if the facts charged here amounted to such black and daring atrocity, there would be an end of the cause; but this is not the case. It is not attempted to be said, that the life of the king is, or ever has been, the object of the present attack; it is not the compassing and imagining of the death of the king, directly with an intent to kill, but it is a constructive imagination only. It is not here a levying of war, that is treason independently and altogether, but the contriving and conspiring to levy war, which, in the construction that is contended for, is endangering the life of the sovereign, and thereby compassing his death. The words then of the statute appear in every sense that language can admit of, to have a pointed relation only to an immediate design against the royal person, and the overt act must show, that the mind had an equally definite, and certain relation to the accomplishing of such a design.

Many authorities were quoted by Mr. Anstruther, who opened this case, and these were no doubt of high repute in the law of England, and made formidable mention of; many also were passed over which were equally well entitled to be duly regarded. Though I do not build upon them, I am not afraid to investigate their import; I well know they confirm and support, in the strongest terms, the construction of the law of treason which I have hitherto contended for. One of the most ancient writers on the law of England was entirely passed over, that is, lord Coke. I will take notice of him, as he is an older writer than any that have been taken notice of this day. I shall take the liberty to state his opinion, and I have no doubt but that it will have a good deal of weight in your minds on this occasion.

In his third Institute, page 9, he treats of the law of treason, and takes notice of the present statute. By the common law, he mentions, that a compassing or conspiracy to levy war is no treason, for there must be a levying of war *in facto*; nor is this contrary to what the gentleman said who spoke before me. Afterwards, in page 12, he mentions the mode of compassing the king's death, and

how it is to be proved. "In this branch, four things are to be observed; first, this word (provablement) provably, that is, upon direct and manifest proof, not upon conjectural presumptions or inferences, or strains of wit, but upon good and sufficient proof; and herein the adverb (provablement) provably, hath a great force, and signifieth a direct and plain proof; which words the King, the Lords, and Commons in Parliament did use; for that the offence was so heinous, and was so heavily and severely punished, as none other the like; and therefore the offender must provably be attainted, which words are as forcible as upon direct and manifest proof. Note, the word is not (probably), for then *commune argumentum* might have served, but the word is (provably) be attainted."

These are the special words to ascertain this crime, and regard also the mode in which it is to be brought to punishment, which shows how very exactly and critically that high crime was in those days to be judged of and punished. In the same treatise, taking notice of what he had before said, and taking also notice of the same statute, he says, (p. 14.) "The composition and connexion of the words are to be observed, viz. [thereof be attainted by overt-deed] this relateth to the several and distinct treasons before expressed, (and especially to the compassing and imagination of the death of the king, &c. for that it is secret in the heart) and therefore one of them cannot be an overt act for another: as for example, a conspiracy is had to levy war (this, as hath been said, and so resolved), is no treason by this act until it be levied; therefore it is no overt act or manifest proof of the compassing the death of the king within this act; for the words be (de ceo, &c.) that is, of the compassing of the death. For this were to confound the several classes, or "membra dividentia et sic de cæteris."

And he also mentions, "And the wisdom of the makers of this law would not make words only to be treason, seeing such variety amongst the witnesses are about the same, as few of them agree together. But if the same be set down in writing by the delinquent himself, this is a sufficient overt act within this statute." In the passage I mentioned before concerning high treason in the quotation I read to you, you will observe, gentlemen, it is said expressly, that conspiring to levy war against the king shall not be deemed an overt act of treason within the statute; therefore it is clear by plain construction that this crime shall not be inferred. A conspiracy to levy war, is a high misdemeanor, and on account of the danger which may be the result, should be considered, no doubt, as a crime of a deep and serious nature, and should not go unpunished; but according to this author, who considers the point minutely, such a conspiracy, unless the war was actually levied, falls not within the statute. This great authority is the oldest we have in the law of England as to treason, of any weight; he was chief justice in the reign of James 1st, at which period of our history, it will not be pretended but that as high and mighty ideas were entertained of the royal prerogative and authority as in any reign we know of.

Lord chief justice Hale was referred to by the gentleman who opened the case in point of law, and I also hope, gentlemen, that you will find him of some service to you in judging of this case; you will pay a good deal of attention to what that great judge writes upon the subject in his history of the Pleas of the Crown. This author was chief justice, and wrote in the reign of Charles 2nd, and we know that in that reign, any matter which related to the prerogative would not be overlooked. The passage I mean to take notice of, is that which was read by Mr. Anstruther, page 109, and upon which he rested as an authority in his favour. The words are, "Though the conspiracy be not immediately and directly and expressly the death of the king, but the conspiracy is something that in all probability must induce it, and the overt act is of such a thing that must induce it; this is an overt act, to prove the compassing of the king's death, which will be better explained by the instances themselves, and therefore,

"If men conspire to imprison the king by force and a strong hand till he hath yielded to certain demands, and for that purpose gather company or write letters, this is an overt act to prove the compassing of the king's death," &c.

This passage, you will perceive, treats of a conspiracy against the king's life; and though by this time, the writers upon the law of treason had begun to diverge somewhat from the plain and unequivocal construction put upon the statute of treason by sir Edward Coke, still it is clear that the immediate personal danger of the sovereign was the object in view. The passage I have read points not to any strained and forced construction of circumstances from which the king's life might be remotely put in peril, but refers positively and pointedly to such circumstances and situations where the life of the king is expressly pointed at, and where his death could not fail to be the certain consequence. "The conspiracy," says he, "should be of something, that in all probability must induce it, and the overt act is of such a thing as must positively induce the death of the king." Here there is no straining or laboured construction, but a plain and positive direction which affirms what no one will deny, that a conspiracy to levy war, which in its effect must be immediately directed against the king's person, or according to lord Hale's words, must induce his death, is high treason. I will therefore rest upon the authority of this great author, for I think it is positive and expressly in favour of the construction which

can truly be put upon the criminal laws of this kingdom.

Gentlemen, I am sorry to trouble you with so much reference to books, but I feel it necessary in this case, and the more so, as the law was very largely argued from them by the gentleman who opened this case upon the part of the Crown. He took some notice of this writer, and I must observe, that this same respectable judge, in another passage, gives a most positive and direct opinion as to the expediency and propriety in giving a proper explanation and just construction of the statute of treason. Talking of the 25th of Edward, and of constructive levying of war, he says, "These resolutions being made and settled, we must acquiesce in them; but in my opinion, if new cases happen for the future that have not an express resolution in point, nor are expressly within the words of 25th of Edward 3rd, though they may seem to have a parity of reason, it is the safest way and most agreeable to the wisdom of the great act of 25 Edward 3d, first to consult the parliament and have their declaration, and to be very wary in multiplying constructive and interpretive treasons, for we know not where it will end."

Serjeant Hawkins was referred to by the honourable gentleman upon the other side, and from what I could learn, and I could learn but very little, only from one part I learnt that "a conspiracy to levy war against the king's person may be stated as an overt act of high treason." I have given all along what I conceive to be the true construction and meaning of the law, which this opinion of Hawkins perfectly co-incides with; it takes notice of the king's person, and only draws a conclusion when the person should be put in danger; and by mentioning the person without affinity or relation to government or any thing else, it is a plain inference that he understood the statute meant to apply only to a case where the royal person is immediately and particularly in danger.

Judge Foster, in his excellent discourse on crown law, is the great authority referred to and relied on this day, by the gentlemen on the other side of the bar, and though, perhaps, at the first view, it may seem that he bears hard upon the doctrine I have been maintaining, as to what is or ought to be deemed an overt act of compassing the king's death in terms of the statute; yet, when more minutely examined, it will be found that this judge draws the very distinction I have been all along contending for. He draws a marked distinction between a conspiracy to levy a war immediately and directly against the king's person, or which is the same thing, when the king's personal safety must necessarily and of consequence be endangered, so that he never loses sight of what was the original intendment of the statute. His words are (page 195) "The care the law hath taken for the personal safety of the king, is not confined to actions or attempts of the more flagitious kind, to assassination or poison, or other attempts directly and immediately aiming at his life. It is extended to every thing wilfully and deliberately done or attempted, whereby his life may be endangered. And therefore the entering into measures for deposing or imprisoning him, or to get his person into the power of the conspirators, those offences are overt acts of treason within this branch of the statute."

Now, the truth and justice of this legal opinion cannot, nor shall it be denied; and what does it come to? It amounts to no more than what I have all along mentioned, that the law of treason, that branch of the statute which respects the compassing or imagining, had a relation only to such acts, attempts, or designs, as had a hostile tendency to the person of the sovereign; and you will not fail to notice, gentlemen, that all the cases mentioned in the passage I have now read, to wit, deposing, imprisoning, or getting his person into their power, necessarily imply immediate violence; and consequent danger to the person is then most properly regarded as high treason, and will, I trust, ever be the law of this country.

In the next chapter, where he treats of levying war, the learned judge mentions what kind of insurrections and risings will amount to a levying of war within the statute, as also, when and in what cases a conspiracy, to levy war for such and such purposes, though not treason within the clause of levying, is yet an overt act of compassing or imagining the death of the king. To the distinction here fixed, I must, gentlemen, call your earnest attention: "Insurrections," says he, (page 211) "in order to throw down all inclosures, to alter the established law, or change religion, to enhance the price of all labour, or to open all prisons, all rising in order to effect these innovations of a public and general concern by an armed force, are in construction of law high treason, within the clause of levying war. For though they are not levelled at the person of the king, they are against his royal majesty; and, besides they have a direct tendency to dissolve all the bonds of society, and to destroy all property and all government too, by numbers and armed force. Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or indeed of any single nation here living under the protection of the king, or for the reformation of real or imaginary evils, of a public nature, and in which the insurgents have no special interest. Risings to effect these ends by force and numbers, are, by construction of law, within the clause of levying war. For they are levelled at the king's crown and royal dignity." He then goes on to notice Benstead's case, where an insurrection was raised to seize archbishop Laud at Lambeth-house, and which was adjudged high treason. Gentlemen I call your atten-

tion to this passage, and I request of you to consider whether some of the cases there enumerated, do or do not very strictly resemble the object for which a rising was said to be intended, as charged in this indictment.

But, gentlemen, you will observe, that the learned judge in the passage I have now read, is speaking of an actual levying of war, where an insurrection has been raised, and war actually levied, which makes the criminality and brings the cases within the statute; and in the very next page and section, what are his words? "But a bare conspiracy for effecting a rising for the purposes mentioned in the two preceding sections, and in the next, is not an overt act of compassing the king's death, nor will it come within any species of treason within the 25th of Edward 3d, unless the rising be effected, and in that case the conspirators, as well as the actors, will all be equally guilty; for in high treason of all kinds, all the *participes criminis* are principles;" and he refers to the case of Damaree and Purchase, upon the trial of Doctor Sacheverell, which would not have been high treason unless a rising had actually taken place. Gentlemen this is a pointed and great authority, and I am well pleased with this opinion, for it suits exactly the case before you. It is not said that any war has been actually levied, but that there has been a conspiracy only to levy war. Gentlemen, you will judge if the existence of that conspiracy is made out by evidence, and although it was, although there was some appearance of some design to effectuate some kind of rising, sure I am, you will never believe or imagine that it was a war of the greater degree, directly tending to endanger the king himself, but, if at all, of the lesser species only, as distinguished by, Foster, which never having been levied, amounts to no overt act so as to indicate a compassing of the king's death in terms of the statute.

I am confirmed in the inference I draw from this evident distinction by the opinion of a great lawyer indeed, quoted to you by the gentleman on the other side of the bar, chief justice Holt; he was not one who wrote books, but he was one upon whose authority books have been written; I will shortly take notice of the passage in his charge to the jury on the trial of sir John Friend, which bears on this, case; his doctrine is laid down in very strong and I think, very clear and expressive terms, and applies most pointedly to the case now before you, so that you will therefore weigh it with sufficient attention. Taking notice of the argument that had been used for sir John Friend, he says, "here is another thing that he did insist upon, and that is matter of law. The statute of Edward 3d. was read, which is the great statute about treasons, that does contain divers species of treasons, and declares what shall be treason; one treason is the compassing and imagining the death of the king, another is the levying war. Now, says he, here is no war actually levied; and a bare conspiracy or design to levy war, does not come within this law of high treason. Now, for that I must tell you, if there be only a conspiracy to levy war, it is not treason; but if the design and conspiracy be either to kill the king or to depose him, or imprison him, or put any force or restraint upon him, and the way and method of effecting these is by levying a war, there the consultation or conspiracy to levy a war for that purpose is high treason, though no war be levied; for such consultation and conspiracy is an overt act proving the compassing the death of the king, which is the first treason mentioned in the statute of Edward 3rd; for the words of that statute are, that if any man shall compass or imagine the death of the king. Now, because a man designs the death, deposition or destruction of the king, and to that design, agrees and consults to levy war, that this should not be high treason, if a war be not actually levied, is a very strange doctrine, and the contrary has always been held to be law." Now, to this doctrine I most cordially subscribe, for you will observe that this is the greater degree of war he is speaking of, which the words he has used evidently show bears directly upon the king's personal safety, who by such a war must either be destroyed or put in extreme danger.

He then proceeds to draw the distinction; "There may," says he, "be a war levied without any design upon the king's person or endangering of it; which if actually levied is high treason; but a bare designing to levy war without more, will not be treason. As, for example, if persons do assemble themselves and act with force in opposition to some law which they think inconvenient, and hope thereby to get it repealed; this is a levying of war, and treason, though purposing and designing it is not so; so when they endeavour in great numbers with force to make some reformation of their own heads without pursuing the methods of the law, that is a levying of war and treason, but the purposing and designing it is not so."

Here, gentlemen, do I close my legal authorities, for I am sure there is no occasion to close them with one stronger in my favour than that I last mentioned. It establishes expressly the distinction contended for of the *major* and *minus* degree of war, to levy which a conspiracy may be on foot; having done so I leave you to draw the conclusion, and I am confident you will not hesitate to think but that the case before you with all its circumstances clearly falls under the last of these degrees, and cannot therefore be attended either with conviction or punishment.

Gentlemen, you have, I believe, all the authorities on both sides before you, and as you are entitled to judge both of the law and fact, in this case I thought it a part of my duty to state what I thought applicable, that you might have at least both sides of the question fairly submitted to your own judgment and discretion.

It is said, gentlemen, that compassing to levy war, must always be held as an overt act of compassing the king's death; but, gentlemen, I cannot agree to this, for the construction which I apprehend is to be given to this statute of Edward 3d, is fortified by another argument of very great importance. It contains two species of treason; it contains a compassing the death of the king, which is treason of a most dangerous nature; and it contains also a levying of war against the king, which also is treason; but if a conspiracy to levy war was sufficient to bring any one within the other clause of the statute, the compassing the king's death, the making the levying of war also treason, is an enactment perfectly superabundant and unnecessary; it being absolutely necessary that before a war is levied there be a conspiracy to levy that war. In this view then the statute is absurd, and though short and most important, is yet in the very outset overwhelmed with inexplicable language and unnecessary redundancy. Gentlemen, I have a higher respect and esteem for the wisdom of our ancestors than to go into this idea. I do not think they would throw away their words in vain, and without intending that they should have some effect or meaning, yet, according to the meaning of the clause which the gentlemen contend for, they have been grossly guilty of misapplying their words to no purpose. I cannot presume this, and I must, on the contrary, conclude that the legislature of England, at that time as well as in later periods, really understood that there was a distinct difference as to what was meant to be expressed in the two branches of the statute, that they were different species of crimes altogether, and could not be taken by implication and strained construction to explain, aid, and assist one another.

Gentlemen, the same opinion and idea is confirmed and powerfully strengthened by the consideration of one or two statutes in subsequent periods. By the statue of 13th of Elizabeth, I dare say I have no occasion to read it, I will state what I conceive to be the import of it, but I stand under the correction of the gentlemen on the other side if wrong, by that act it was declared that a bare conspiracy to levy war of itself should be deemed high treason. Gentlemen, did not this import the consideration, the construction, and understanding of the nation at large, and the opinion of the legislature and sages of the law that made this statute, that at that time a bare conspiracy to levy war could not be brought any how within the clause of compassing or imagining the king or queen's death?

What occasion was there for that statute if the law stood as it is now contended it does, that a conspiracy to levy war without any distinction, was a compassing of the king's death, and came under the statute of Edward 3d? but this was under the view of those who enacted the statute of the 13th of Elizabeth, it was under their consideration, but still they thought it necessary to make such a law. This statute was only for the life of the queen, so that on her demise, and upon that statute's expiring, the question reverts to what was the law before that statute was enacted; and this I have endeavoured, I think upon sound reason and construction, fully to point out. Again, gentlemen, in the 13th of Charles 2d. another statute was enacted similar to that of Elizabeth, whereby it was declared, "That whoever should compass or imagine to levy war against his majesty, within the realm or without, should be deemed guilty of high treason."

Here again the enacting of this law bears me out in this case as well as in the former; for it was understood and must have been acknowledged to be the law by our ancestors, and the lawyers both in the reign of queen Elizabeth and of Charles II. that by the 25th of Edward 3rd, a compassing to levy war was not high treason, nor could fall under the spirit or tenor of the statute of treason.

Here also the same conclusion follows, that act was only made for the life of Charles the 2nd, so that having expired, the law reverts to that construction which I say it should have, and which according to my argument, it certainly had before these temporary acts were passed.

Gentlemen, I do not really think I am straining the matter too far, and God forbid that even in a case of death, which it must be if the prisoner is found guilty, God forbid, I say, that I should strain the matter too hard where a conspiracy it is said comes in competition, a conspiracy against the life of our gracious king; but from authorities I have been at some pains to discover and digest in my own mind, I do believe I am not pressing this matter farther than I ought. I have examined a good many precedents and cases which have occurred since the period I was talking of, but I will not refer you farther back, as I do not wish to engage much of your time, than to the reign of Charles the 2d; and it appears to me, that wherever there has been an indictment upon the compassing and imagining the death of the king, there has always been a direct reference to some attempt upon the person of the sovereign, or some relation to it in some circumstances, so that imminent danger to him must have followed from the measures pursued.

In the Rye-house plot business, so well known in history an attempt was made to assassinate Charles the 2d; in that case, there was no occasion for using any strained construction, or of bringing proof of any overt act, which, by inference might have perhaps accomplished the king's death; there was a direct attempt against the life of the sovereign, a violent attempt to cut off and assassinate him, but which however never took effect; no doubt two trials followed those of Walcot, Hone, and others, who were concerned in the Rye-house plot; I mean the trial of Algernon

Sidney, and lord Russel. These were tried upon indictments for high treason, and an overt act was endeavoured to be proved upon lord Russel, that he had been in conversation about seizing of the king's guards; and that was held to be an overt act of compassing the king's death. But you will not be led away by considering that case as a case of precedent in point of law, for we know well that the attainder and the proceedings against that noble lord were reprobated and reversed in the next reign, and the ground of the reversal, both in that case and in that of Sydney and Armstrong, was the having flown in direct opposition to law.

The next case that strikes me, as having any relation to the present case, is that of lord Preston, who, in the reign of William 3d, endeavoured to support the interest of the exiled monarch, James 2nd.

Now, it is a fact, gentlemen, that the chief charge laid in that indictment, was, his having endeavoured to bring in the Pretender, for so James 2d, was then called. It is no doubt true, that the indictment was framed also, upon his having been guilty of compassing the king's death; but this is easily explained, for there the direct effect which lord Preston's attempt must have had upon the life of the sovereign, was so obvious, that it would admit of no other construction; it was to bring in James 2d, it was as much as to say, we will attempt to take away the life of the sovereign, king William; for there cannot be two kings in this country, one or other must fall: so that in fact, it may not entirely have gone according to the judgment which, by inference, was formed upon that fact; and, I do believe, upon looking into the record, it went upon the other ground, to wit, endeavouring to bring in the Pretender, and not at all upon the ground of his compassing and imagining the king's death.

The next great instance which occurred, was the assassination plot, in the reign of William 3d, you must be well acquainted with the circumstances. Those who were first tried, to wit, Charnock, King, and Keys, were accused of a conspiracy to assassinate the king; the indictment was laid upon an attempt to compass the king's death; it was proved there were positive and direct acts, in order to take away the life of the sovereign, by compleat assassination; it says, it was by having that in view, only, and not any attempt against the life of the sovereign, by constructive reasoning, or far fetched inference, which would at all times admit of dubiety. A good many cases were tried at the same time, to wit, the cases of Rockwood, Cranbourne, Lowick, Cooke, and Knightly, but they all went nearly upon the same point: for in these, the indictment was laid, both on the plot for assassinating the king, and for adhering to the king's enemies, being then at war with France; so that, upon either branch there was no occasion for any strained or artificial chain of argument. The case of sir William Parkyns was precisely similar, and then it was that the opinion of lord chief justice Holt, in the case of Friend, formerly noticed, made its appearance. That opinion, so far from militating upon my argument, confirms it; for, in that case, the indictment was laid, both upon compassing and imagining the king's death, and upon adhering to the enemies of the king, and it is well known, sir John Friend had as high a connexion as possible, with the persons concerned in the assassination plot; but, although that was not, perhaps, completely proved, certain it is, that in that case, there was a distinct ground of treason, that of adhering, and corresponding with our enemies. And as to sir John Friend, it was proved, that he had a commission from James 2d, and enlisted men for his service. This was, in fact, an attempt to levy war, against the interest of William 3d. It comes to the case of Preston and Ashton, where there was an intention to dethrone one party, which was to be done, by introducing James 2d, and it is clear, that had as direct a tendency to endanger the personal safety of the sovereign, as can be brought, by fair construction within that branch of the statute which relates to compassing or imagining the king's death.

Mr. Anstruther took notice of a later case than any of these, the case of Christopher Layer, in the year 1722. This, I believe, has always been considered as a leading case, and certain it is, that it is by no means a short one.

This gentleman was indicted, 1st, for compassing the king's death; 2d, for an attempt to bring in the pretender.

Now, as these were two grand conclusions, I am surely not tied down to conclude that it went entirely either upon the one or the other of the two charges; and one or the other, are equally and sufficiently broad to bring it within the measure of high treason: accordingly, the acts laid were very numerous, no less than five different acts were charged: that he conspired to stir an insurrection; to bring in the pretender; enlisted men for him; published a treasonable declaration; and lastly, conspired to seize the person of the king. The conspiracy to bring in the Pretender, and the enlisting men for him were proved, so that here he fell within two clauses of the treason law, the bringing in the pretender, and adhering to the king's enemies, and the charge of compassing, might be left out altogether: the publishing of the treasonable declaration, and conspiring to seize the king's person, were proved by Lynch, the chief witness, so that here was a complete case, nay, the completest of all cases, no less than a direct attempt to take away the life of the king, by seizing his person, an act which I must always construe, as putting him in such danger that death may soon be expected to follow; nor do I deny what is so well said

by the learned judge Foster, "that between the prisons and the graves of princes, the distance is very small."

I trust, gentlemen, that these cases will have considerable weight upon your minds, in judging of that which is now before you; for though I have attentively considered the indictment which lies before you, yet I do not think it is such an indictment, as bears so exactly, or in any degree bears so much upon the personal danger of the king, as any one of those cases I have mentioned. — If there should be a defect in the law of this kingdom, I am sorry for it; and if it should be necessary, as in the 13th of the reign of Elizabeth, and 14th of Charles 2d, let an act be passed for the temporal life of the sovereign, or let it be perpetual, declaring, that a bare conspiracy to levy war, shall be high treason; let it be so, and in God's name, let the lieges know which way the law is to go, that they may not find a precipice under their feet.—I hope and trust, however, that there will be no occasion for any addition to the voluminous penal code of this kingdom; for I am confident, that his majesty rests securely in the bosom of his country, and requires no farther support, than that which I am sure he deservedly enjoys, the love, affection, and loyalty of his faithful subjects.

Having taken up so much of your time, gentlemen, in stating what I conceive to be the law of treason, as applicable to this case, and the particular view you are to take of the construction, allowed to be given to the indictment, which has been preferred against this man, I now call your attention to the construction you are to allow your minds to give to the import of the evidence that has been given this day; and in doing so, I shall endeavour, not to trespass much farther upon your time or patience.

The accusation contained in the indictment, in order to make out the proposition, that there has been a compassing and imagining of the king's death, seems, according to my ideas, to resolve itself into four heads. That there have been means used, and actual measures taken, in order to raise and establish a convention inimical to the present government of this kingdom. That a conspiracy has been also entered into, by certain persons, the prisoner being alleged to be one, for seizing the Castle of Edinburgh, for fighting with the forces, drawing them out of the Castle, and putting them in such a situation as to get an advantage over them; and for seizing the judges, magistrates, the banks, and excise-office in this place. Another charge is, for publishing addresses of an inflammatory and treasonable tendency, to draw off the attention of the soldiers from their duty, and stir up mutiny among them. And the last is, having taken measures to provide arms, in order to carry these proceedings into effect. In the outset of this case, much evidence was brought forward, relative to what took place in London some time ago, in a society called the London Corresponding Society. That evidence, all along, appeared to me, totally unconnected with the present question, but when objected to as such, it was then avowed, by the gentleman who opened the case, that it was done, with a view to connect the prisoner at the bar with the proceedings that took place between the London Corresponding Society, and the British Convention here. I am satisfied such was the intention, but at the same time, I find I have no occasion, and shall therefore take no notice whatever, of that society, nor any of their proceedings: let their intentions be as wicked as what that gentleman may figure them, it is of no consequence to my argument; for I say, no connexion whatever has been established between that society and the prisoner at this bar, and the mode in which it was attempted to be made out, as clearly, nay, still more clearly showed, that the measure had failed. We mean, say they, to prove a connexion, betwixt the London Corresponding Society, and the prisoner at the bar, by means of the British Convention in Edinburgh, and evidence was led to make out this proposition. That evidence, however, made out no such point; on the contrary, it at once established, that the prisoner, Mr. Watt, never was, or had been a member of the British Convention at all. It is needless, therefore, for me to take notice of any thing that took place in respect to the London Corresponding Society, or of any correspondence or communication that was carried on betwixt that society, and the British Convention, at Edinburgh, for with that convention, and its measures, whatever they were, he had no connexion.

When the British Convention was put an end to in the close of the year 1793, it has been said that on the back of that, there arose other meetings, and that the private societies were, not only more numerous than before, but they were also better and more punctually attended than ever; that there then arose two several meetings, the one called a Committee of Union, ont of which was formed another, called the Committee of Ways and Means; and it is stated that the prisoner at the bar was a member of both, and having been at one and the other of these meetings, is to be implicated in all the guilt which can be affixed to their proceedings.

Gentlemen, I shall not I trust be long in stating what I conceive to be the import of the evidence laid before you upon that head, and I shall do it the more readily, as it is a duty incumbent upon me for the satisfying of your minds, as well as of my own. But what was attempted to be carried into effect by these two meetings, the Committee of Union, and the Committee of Ways and Means? We were told in the opening of this case, that it was to seize the whole power of government into their own hands, and to mould the law

into their own form and shape. This is the mode in which this point was opened in the outset, but I do not find any support given by the evidence, to such a high strained and overbearing hypothesis. I see no evidence of there being any danger whatever of such a design. This supposition, however, was endeavoured to be supported by proving an attempt to seize the Castle, the excise office, the banks, the magistrates, and judges; still, however, I do not find any evidence that brings the actual attempt for seizing of the Castle home to this gentleman. There was an account given, no doubt, that this gentleman had brought forward some kind of plan of that sort, but the witnesses for the crown, both Mr. Bonthrone and M'Ewan say nothing that can be construed into a plan of that nature having been agreed upon, digested and put in train, so as to be carried into ultimate effect. If it could even have been mentioned at all, it is impossible to conceive that the practicability of so absurd and ridiculous a plan could have entered into the head of man. I have taken down what was said when this strange plan was talked of; Arthur M'Ewan said nothing particular was said about seizing the Castle, and no time was mentioned when it was to be done. Now, if this had been an established plan, would not something have been done in order that it might actually be carried into effect? some time would have been fixed, some measures taken, and some preparations made, but there is not one witness to speak to an allegation of that nature: all that they point at is a conversation about such a plan, if it was thought it might be practicable, and if its success and effect depended upon its practicability, I am sure it could have no existence whatever, even in the most visionary imagination.

According to my understanding of the matter, I conceive it was meant never to be carried into execution, it existed only in the most speculative form imaginable, if at all, but there was no system or correct plan laid down, no particluar act proposed, no means prepared, for that extravagant wild scheme that is brought into evidence. In this evidence of Bonthrone's, he takes notice of his having been at the Sub-Committee, which I understand to be the Committee of Ways and Means, consisting of Watt, Downie, Stock, Fairley, Burke, M'Ewan and himself, in all seven persons: that he never heard Watt propose any plan about seizing the Castle, but heard him says he, make some kind of proposal, but does not say (and I will stand corrected by the gentleman that has taken down the depositions) he ever heard him propose any plan about seizing the Castle. Is not this conclusive that there was not in fact any serious determination to make such a rash attempt? It appears conclusive that there never was such a proposition, and you must of course lay it out of your minds in weighing and judging of this case altogether.

It is also said an attempt was to be made to attack the king's soldiers, a party to be at the Luckenbooths, and a party at the west bow. From this gentleman's evidence (Bonthrone) a witness for the crown, whose name I would wish you to take notice, I perceive is more frequently mentioned in all the meetings that took place than that of any other of the members, so that he must know the amount and sum total of every thing that was talked of at these meetings, he tells you hardly any thing at all about attacking the soldiers: he tells you of some wild kind of scheme of kindling a fire at the excise office, and that this would naturally draw out the soldiers to extinguish the fire, so that an opportunity would be given to carry on the dangerous scheme intended. This would bring the soldiers from the Castle, and then he supposes (he is a gentleman who makes many suppositions) the soldiers being drawn out of the Castle, perhaps the party he belongs to would take a part in the proposed scheme. Gentlemen, it will not be pretended to be said, that taking a castle by force or without force, are one and the same thing; if they found this castle empty, they might be entitled to go there as well as to any other place. This would not however have been a levying of war, for the only characteristic quality of levying war, being using force, and in this case it is clear there was none used, nor any such thing either done or proposed to be done; but only an intention, it is said, of a conspiracy to seize the castle (I have it from his evidence), not to be done, if such a mad scheme were ever in agitation, by force; and he expressly says he heard nothing, nor knew nothing of attacking the king's soldiers at all.

Therefore, gentlemen, I have a right to call upon you to lay out of your minds altogether that rhodomontade scheme, if it ever existed, of seizing the Castle. Could there be a more ridiculous absurdity than supposing the possibility of such an attempt! In order to accomplish this mighty effort of human strength and ingenuity, the only force is seven men. With seven men to seize one of the strongest castles in the kingdom! I see no more produced to you by the evidence than seven men; these seven men, who compose the Committee of Ways and Means, meet, and then they lay their wise heads together, it is said, in order to lay hold of the Castle of Edinburgh. It is too absurd a scheme in fact to be got over, or to come into the heads of men to conceive. It was so absurd and ridiculous, I am surprised it could be laid in this indictment. And then, gentlemen, be pleased to consider what is the evidence brought forward of this mighty conspiracy? Who are the witnesses who spoke at all to this strange confused and inconsistent scheme? The witnesses which the crown entirely relies upon are Bonthrone and M'Ewan, who are supposed to be accomplices in this intended conspiracy. They are both *participes criminis*, if there has really been any

crime in contemplation, and on that account not entitled to or deserving of any credit in your minds. If again there has been no crime committed, if no scheme of this nature ever was in agitation, they are still less to be credited; for they have so far volunteered in the mysterious story, that they cannot now with any consistency entirely fall back from the strange tale, absurd and unaccountable as it turns out to be.

But, gentlemen, I dread not their evidence; some of these are not very ready in their story, and though in a situation where they have no interest to be very delicate, either in evasion or in concealment, yet when interrogated and desired to speak out boldly, they tell you they cannot positively say, or they cannot tell, they suppose so,—but their depositions are even more favourable to support my argument, for they positively say they never saw any scheme that was proposed or agreed to be put in execution, or any attempt made to carry into effect the mighty project of seizing the Castle of Edinburgh.

A great deal of evidence was produced as to a supposed conspiracy for seizing of the banks. I need not trouble you, gentlemen, with recapitulating that evidence, nor with what related to the seizing of the excise office which stands precisely in the same situation. But I do maintain, that if this case is to be brought within the description of a conspiracy to levy war against the king, which is thence said to be an overt act of compassing the death of the king; I have nothing to tell you more than that the actual seizing of the banks would not be levying of war according to the law of England. The banks are the private property of individuals, and a burglary of a dangerous and aggravated nature might have been committed. The injury in such a case might to some individuals be greater than to others, but I trust that it never will be laid down for law, that the seizing of the banks or open attack of any such building or repository, or any other building of a private nature would be a levying of war. It might amount to a riot, and if it was done secretly to a burglary, but no more. But the case is a thousand degrees stronger, for it has not been said, that any attempt or attack was actually made upon the public banks; no gentlemen, no such thing has been alleged; it is only said that there was a conspiracy or design to seize the banks, but which you well know never was carried into effect.

How then does the question rest, even upon the crown's own supposition? There is the intention to do an act which had it been done would have been so far criminal, but which it is agreed never was effected; without going farther therefore it is enough to say that there is not the slightest resemblance of a criminal act before you, far less such a one as would tend to establish and fill up the deep accusation of high treason. I need not I am sure, gentlemen, labour this which is so clear a point any longer, but the same observation was made as to the design to seize the excise-office, and the same observation in answer precisely applies. It is the king's house no doubt for a certain branch of his revenue, but it is not a place of strength belonging to the king. I am equally strong here, the positive attack upon such a house, upon such a repository, could not be levying war; and although it was proved, it will never bear the construction intended to be put upon it in order to make out the case which is a case of high treason. It does not appear to me there is any proof to show any such intention as seizing either the one or the other of these two public buildings, so that whether the fact is admitted or denied, the legal conclusion is in either case, equally strong in the prisoner's favour.

Much was said of a design supposed to be connected with this alleged plan, and of which the witnesses speak equivocally, that is, a design to seize some of the very honourable judges upon this bench, and the honourable chief magistrate of the city. I am sure I should be extremely sorry if ever the slightest harm came to any one of these honourable persons; it would give me, I am sure much pain; but I am speaking of a case of law, and I must observe in point of argument, that an attack upon any one of the honourable judges or magistrates whom I now see before me, would not, though attended with force, amount to an act of high treason. We know well that any violent attempt upon the person of a judge by the statute is high treason, but only when sitting in judgment. But if not sitting in judgment, then it is clear that though attended with even the most fatal consequences, which God for ever deprecate, it would not be an act of high treason. If the actual perpetration of such a crime would not have amounted to a charge of high treason, far less can the bare design to make such an attack as might be attended with fatal consequences, be deemed according to the construction of law an act of high treason. But the case is infinitely stronger, for the attempt was to do what? It was to seize the person of the judges and that of the chief magistrate of the city: this is a degree immensely remote from the crime of high treason, and though deserving of exemplary punishment, if it had taken effect yet would not fall within the description of a crime of that heinous nature. But this is not all, for it was only said there was a conspiracy to seize the persons of the judges and magistrates, not that any actual attempt was made to seize them. What then does this accusation come to? It comes to nothing at all; it is frittered down to the most harmless accusation in point of law that can be figured to the supposed conversation about doing what would have been a misdemeanor but which never either was effected or attempted to be carried into effect. Upon this I need say no more, for whatever evidence

might be brought upon that charge, it is one that cannot weigh in your minds in the present shape of this indictment, it must have been brought forward in a different form and shape, and not upon the face of this indictment which is the only one for your final determination.

Gentlemen, you have heard much of the instruments that are now before me upon the table; they have been tumbled, held up and brandished about in order to convince you that there was here a dangerous conspiracy lurking in the bowels of the country, which might in its tendency and effect, deprive us all of life; and in order to make this out, these weapons were brought forward and laid upon the table, and evidence brought of the persons by whom made, Orrock and Brown, and of the persons by whom they were ordered. Gentlemen, in the outset, I would require no more to show you the absurdity of rearing any argument upon such a supposition than this, that but a very small number of these weapons, dangerous as they may appear to be, and every weapon of that sort appears dangerous to those who are unused to look at them: but if I can make it appear that this is all false apprehension, and I trust I can do so, these instruments will not give the alarm they did when first brought into this court. It was said, but not clearly established, that Watt went to Orrock and desired him to make one or two of a certain construction, and these being done, then a few more; and that Brown made some others; but what does the whole number of these dangerous hostile weapons amount to? even with all the attention paid to find them out, and I am sure the sheriff has used the greatest attention to find all that could be found, how many are produced? about 46 or 47 pikes, not I am sure 50, and these were to be put into the hands of how many men? I have paid all the attention to the evidence that was possible, and I have been able to discover only seven men that are alleged to have borne any chief part in this conspiracy; I cannot find upon recollection there was any evidence produced, so as to make you believe there were more concerned in the plot than that number, yet every thing, however, was to be accomplished and achieved by these seven men, armed with 47 pikes. Gentlemen, you have seen before you this day those seven conspirators, and it does not strike me that they bear any resemblance to those heroes of antiquity which we read of in romance, and who might, perhaps, in days of yore, have been able to accomplish such a wonderful adventure; yet these seven champions were to perform wonders; they were to use forty-seven pikes, and with these were to take the Castle of Edinburgh; with these forty-seven pikes they were to way-lay all the soldiers who were to be marched out for fear of some fire at the excise-office; then these seven men are to secure the banks, and with these forty-seven pikes are to lay hold of the whole government of this country; nay, it was to be carried to a still greater extent; they were to usurp the management of the whole kingdom, were to lay waste, if resisted, the whole country; were to change the king's ministers, force him to alter his measures, and to make peace, besides every thing else which they should require. Now this clearly appears to be one of the most absurd, inconsistent stories that was ever heard of. I need do no more than state it, taking it as stated by the evidence, to convince you it never could be a scheme that could have any tendency to success; and if they could not excite the people to run their heads into danger on a mad scheme that could never be carried into effect, what had they to hope? Here it appears that the evidence on the part of the crown is extremely lame; for, notwithstanding all the discoveries that have been made, these forty-seven pikes are the whole that are to be found. I leave it to you to judge how it can be supposed these arms were meant and intended to be applied in the advancement of these hazardous attempts of this Committee of Ways and Means. It is impossible for a moment to believe that they were provided for, or even meant to be used in the wild scheme so often mentioned, if ever such a frantic proposal had any existence. No, they were most certainly provided for some other purpose, and here I will direct your attention to what the witness Aitcheson says; he is a man of a good deal of knowledge, he is a witness for the crown, and is not to be impeached; I hold him to be a good witness, and he says he thought they were well advised in procuring some arms; some people it is true were not fit to be trusted; but he thought it fit to procure some arms to prevent an assault by a foreign invasion, or otherwise. Would to God, gentlemen, that the happy situation of this country was such that every one might be trusted with arms in his hands or in his house! We might then be a national militia altogether, we might do without the fatigue and expense of a standing army, and exist in security and mutual confidence with one another. But, it is said, these people are not fit to be trusted with them; perhaps it may be so, perhaps not, but such, says Mr. Aitcheson, were the purposes for which these arms, if obtained, were to be applied.

I have endeavoured, gentlemen, to give you what I conceive to be the true and just notion of this supposed plan, of this supposed committee of people, met, it is said, and framing a conspiracy to overturn the government of this country, and you have heard what it was said to be by some of the witnesses I addressed, and from their description you will judge of its practicability, and if it really ever did exist, either in idea or in contemplation. But I say there is not evidence before you to show that there was an attempt of that nature that ever was intended to be carried

into effect. I know the right honourable gentleman on my left hand will put it, and the other honourable gentleman did put it, that this scheme, had it been forwarded, was a levying of war; but although that might perhaps have been the case, had the matter been pushed on, as these gentlemen say it was intended to be pushed, yet the rude, undigested, wild, and absurd scheme, of which there is no doubt some mention made by the evidence, was nothing that could be called a conspiracy to levy war; it might be called by some name of inferior degree, that might in time perhaps rise up to something of a dangerous description and tendency, but in the way in which you now must view it upon the evidence, it cannot be called such a conspiracy to levy war as to fall within the statute, and subject all that are principals or accessories to the dreadful pains and penalties of high treason.

Much has been said of an address or hand-bill, which it is alleged was artfully and insidiously circulated among the fencible regiments of this country, in order to draw them from their duty and allegiance, and a strange attempt has been made to trace this transmission and circulation to Hardy, a serjeant of the Hopetoun fencibles. But, gentlemen, it appears that it is impossible to trace this publication, whatever its tendency may be, either to Hardy or from the prisoner at the bar; and I have not yet begun to take notice of its tendency, but whatever that may be, it is nothing to the prisoner at the bar, as it is not brought home to him in any one shape. The only evidence upon this point is, that of William Watson, who tells you a story with respect to a hand-bill or paper, containing such an address, and wishing to see it, goes with Downie, who says, perhaps I may be able to procure you one; he does not seem to be very certain about it; when he is shown Watt at the bar, and asked if he knew him, he says, he could not say he did, or if that was him; he then goes to his house and Mr. Downie with him. I do not know, however, that it was Watt, I do not go upon the supposition it was not him, but it might be another; but as to the alleged conversation between Downie and Watt about it, I see no evidence whatever. Downie turns his back and comes out and takes Watson up to a shop in the South Bridge, to the shop of one Kennedy, and he says I will get you one; but very cautiously, Downie throws some of them down upon the floor, and says, "take up one;" Watson accordingly takes up one and gives it to one Johnson, who it seems gives it to one Sandilands, and he gives it to a serjeant Hardy. This is the chain, but there is no proof of any connexion that the prisoner had with these persons, not even of this man Watson's getting it from him. He gets it, I will prove by a strict legal *alibi*, he gets it from Kennedy by means of Downie, then it goes to the hands of Johnson, and so to serjeant Hardy. He does not tell you what he did with it, he might put it in his pocket or destroy it. As to the serjeant, I must suppose him, being a non-commissioned officer, to be a good soldier, and if so, he would not, I am sure, circulate a paper which might create a mutinous spirit in the corps, and accordingly he tells you in express terms, that this was the only one of these papers that was seen, and I am pretty positive as to that, nor will it, I believe, be controverted.

But although I were to allow this had been a hand-bill of the most dangerous tendency and inflammatory nature, is it meant to be said by the honourable prosecutor on my left hand, that this is treason, or a sufficient ground to make out the case of a conspiracy to levy war? I will venture to say, it cannot be considered as a thing of that nature. I have read the address, and I will again make bold to say, it is a very complete and well penned address to excite that regiment or any other regiment into mutiny; mutiny, I well know, is, by the mutiny bill, punishable with death, but this is not mutiny, and though I have no hesitation in saying, that an attempt of this nature is at all events a high misdemeanor, and punishable in a most serious degree; yet I know of no capital punishment that could be put upon that attempt; I know nothing like it in any law whatever, whether civil or military, that can draw on the dreadful consequence of high treason. The exciting soldiers to desert, is a crime that would meet with an exemplary and fixed punishment, and I would have no hesitation to say, it is entitled to meet a very severe punishment; but it is clear this address or hand-bill is not pressed upon them in any conclusive manner, in fact, in no manner whatever; for it is lost in the outset, in one or two transmissions, and never heard of again; therefore it can have no weight with you in making any proof, or of aggravating the charge laid in the indictment.

Gentlemen, much stress was laid upon what also seemed to have been a part of this proposed plan, which it is said, was to be attributed to the unfortunate prisoner at the bar, after they had seized the Castle and public banks, and the persons of the judges; this was in publishing some declarations, enacting laws, and taking upon themselves the powers of government and of legislators; that no person should leave the town under pain of death. All the absurd tenor of this scheme, if there ever was such a scheme in existence, is it not all of a piece? Who could suppose such a wild Don Quixote scheme as that of seizing the Castle, and all the other consequences, and is not this one in every respect tinged with the same absurd complexion? I shall not trouble you with further observations upon it. If the seizing of the Castle was in fact suggested, they never could be supposed to be in earnest upon it; if there is that absurdity upon the face of the plan spoken to by their own two witnesses,

M'Ewan and Bonthrone, the detail of their own plan is still less worthy of meeting with any degree of credit and belief from you. I have so far endeavoured to show you that the evidence on the part of the crown has not filled up the measure of the facts charged in the indictment, and if I have succeeded in that, my case is good; because I succeed equally by a failure on the part of the Crown, as by establishing any defence of my own; and if I have done so, I think, notwithstanding all the suspicious circumstances in this case, I must ultimately prevail. That there are some suspicious circumstances in this case, I have not the least hesitation to acknowledge; but at the same time, I will take it upon me to affirm, that they are not such as will allow you, gentlemen, thinking with serious deliberation upon the result of this man's actions, that he should be guilty of such attempts, or his mind bent upon such purposes, as could be construed into any act of conspiring to levy war, for the purpose of overturning this truly blessed, happy, and long established government.

Gentlemen, I rest not here, and you might perceive from the evidence in exculpation of this man at your bar, that he stands in a different situation from any other prisoner; and though you were to conclude that all these matters he is said to have done and acquiesced in are true, and that they were to be aggravated to every degree of apprehension and danger in which you can figure them; though all those matters were fixed perfectly by proof; I say, he stands in such a situation, as in my idea, must render him safe. It is an established principle of law, that it is the *animus* with which any person commits an offence or accedes to it, that is the test whether such act is criminal or not.

Now, I say, the situation in which this man stood, was such, as notwithstanding the appearance of external circumstances against him, was sufficient to excuse him from all the participation he seemingly took in the measures of those with whom he was apparently connected, if you should think, which I by no means concede, that these measures were in themselves criminal and deserving of punishment.

The right honourable the lord advocate's evidence, and that of Mr. Clerk the sheriff, establishes completely the situation in which Mr. Watt stands. Though that evidence relates to a correspondence he carried on in the outset of matters, when disturbances began in this country, yet it will be found, he was all along faithful to that cause in which he had embarked. Mr. Henry Dundas's letter he has produced, in answer to one which he wrote him in September 1792, and it was admitted on the part of the crown, most handsomely, to be that right hon. gentleman's writing and subscription. This letter then under the hand and seal of Mr. Henry Dundas is now before you, wherein Mr. Dundas desires Mr. Watt to persevere and to proceed in those measures he had held out he would do; that he would be doing well of his country, and that he would be in perfect security in following them up. This letter of the right hon. secretary, was in every respect a proper letter; it was the answer not only of a statesman, but of a man; it neither rashly rejected information, which might perhaps be attended with advantage to the country, nor did it betray any anxious apprehensions or unseeming eagerness for a continuation of the proffered intelligence and correspondence. Upon that letter Mr. Watt relied and followed the line of conduct which that letter prescribed, and this account is supported by the evidence of the right hon. the lord advocate, who was so obliging as to give information upon the matter; he says, in consequence of a communication with Mr. Dundas, who mentioned this matter to him, and he desired him, when he went to Scotland, to inquire him out. The lord advocate and Mr. Watt have accordingly had several different meetings; Mr. Watt gives his lordship information upon several particulars, which the lord advocate himself says were facts of importance, and upon which his lordship took such measures as the importance of the case seemed to require and dictate. Mr. Watt accordingly fairly enters into this correspondence with the officers of the crown, and I am authorized to say, continued in it; and if so, I am equally well authorized, I think, to presume and be believed, when I state to you, gentlemen, that he had not deserted this line of conduct, nor had taken up any other line which stood in opposition or contradiction to it. In the situation Mr. Watt stood, he had not surely nor ever had an intention of deserting that line of conduct he had chalked out for himself, nor will it easily and rashly be presumed, that he had changed his mind, and had fallen back from that chain of correspondence and communication, which I have proved, was established betwixt him and the honourable secretary and the lord advocate of this country.

Gentlemen, I state to you, simply the fact, as I am desired to state it, and you may perhaps be nevertheless inclined to conclude, that this gentleman's professions and story, are contradicted by that line and chain of conduct he has ostensibly, and apparently subsequently pursued. But this, gentlemen, is what I cannot possibly allow. For, when I find that a man is fairly embarked in a particular line of conduct, I must suppose, that he follows that line up, more especially, when you find circumstances so strong in that situation, as to preclude any idea whatever of his having betrayed his trust. You must not, therefore, be led away by external appearances, nor are you entitled to conclude, that a person, in that dangerous and delicate situation, is not acting with strict fidelity, merely because he appears under negative colours, and gives no positive and active indications of the sincerity of his conduct.

But this argument, gentlemen, is to be

carried still farther; for, though I should discover such a person to be acting, to all appearance, in manifest and direct opposition to his secret professions, yet I am not, from thence, entitled to conclude that he has made an absolute and total desertion. The very reverse holds; for, let it be supposed, that the unhappy times of the rebellion in the year 1745, and 1746, were to return to this country; and suppose, that it was necessary or expedient, that one of the royal army should intrude himself into the enemy's army, in the character of a spy, how, I pray you, was he to discharge his duty as such, with effect to the party he meant to serve, and safety to himself?

There is but one, but one mode and line of conduct, in following which he could be of any service, and that is by disguise and deception; no otherwise could he be of any advantage; for if ever he appeared in his true character of an enemy, it cut him off from all confidence, and rendered him incapable of gaining any intelligence in the capacity of a spy, which it was intended he should act in. For such a person, therefore, it would be necessary, not only that he should abandon all appearance of connexion with his own party, but that he should even adopt, and go into every measure of that party he was employed to watch. He would be obliged to enrol himself in the corps of the adversary, to forego his own distinction of dress, and adopt theirs, as the only means of safety from detection. An adverse case to this has occurred within my own remembrance; it was by failing to take these necessary precautions, that an honourable gentleman, and most valuable officer, with whom I was well acquainted, was laid hold of, as a lamentable instance of severe punishment, and at length suffered a cruel and ignominious death.

You must at once, therefore, gentlemen, perceive, and it surely does not require much illustration, that in order to act with effect, in a situation of this nature, it is necessary, seemingly totally to desert and abandon that cause which he had really at heart; and suppose a man, engaged in such an adventure was to be found in the situation described in the uniform of an enemy, and even in arms, that would no doubt be a strong case, a very strong case, and one wherein there would be much ground for suspicion of fidelity; yet strong and even strange as it would appear, it would not be sufficiently strong for you to presume that he was acting deceitfully, but on the contrary, you would be tied down to believe, that he was still acting in character as that particular situation, in which he was found, was the only one that could enable him to follow up the line he was in, and give that effectual service which was intended. Had such a person appeared in any other description or character he then unavoidably lost the opportunity of doing that service, and of following up that duty he was strictly bound to discharge.

This, gentlemen, is a strong case, but it strictly applies to that which is now before you, strong as it may be put. It was admitted by the lord advocate, who said he believed the prisoner was such a character as could be relied on, that at the time he was in correspondence with him, he believed him to be sincere. Can you, gentlemen, suppose, that without any cause, he was led away by evil-disposed persons, and adopted another line of conduct? You are not, nor can you suppose that he was so. He apparently followed what was the only line of rendering service to the cause in which he was engaged, and he was to follow this up, and then to take an opportunity of disclosing, when the effect came near to a dangerous tendency. You are not to suppose a person in that situation has abandoned his former trust, and I say, that as long as there is no open and manifest declaration upon his part, he is to be presumed faithful in that trust. This correspondence with these honourable persons, is carried on as late as July, 1793. Then comes the manner of stating the proceedings of the British Convention, which were openly published in the Edinburgh Gazetteer. It is well known their proceedings were never kept secret, or concealed, so that, for this period, from July till December 1793, when the convention was dissolved, nothing was carried on of a secret nature, which he could give information of. The convention is dissolved; and then it was resolved, soon after, to wit, on the 5th of December 1793, as appears by the evidence and information laid before you, to form this Committee of Union, and immediately subsequent thereto, the Committee of Ways and Means is raised up, sometime in the month of January, 1794. Their proceedings accordingly go on, and Mr. Watt showed that very same inclination of following up the intention he set out with; he became a member of both, of one and the other of these committees and though perhaps, he did not in fact, yet I have not the smallest doubt to say, it was his intention to give the necessary information, when the proper period for doing it should occur. If there had been that conspiracy actually existing, which is pretended, he would then most certainly have given that information in due and proper time, to the rulers of this country, that they might take advantage of it, and be prepared; he would, in that case, have given all the insight into this strange and mysterious plot, that would have been required, had such a plot really had any existence, or had it occurred to him, that the proper period was arrived, when the secret should be divulged.

If, gentlemen, you can possibly conceive any thing more absurd than another, it would be this; if there is any thing more irrational than another, it is the conclusion you must draw as to Mr. Watt's conduct, upon

the forced suppotision that he was not acting with fidelity. If you give belief to Mr. Watt's situation, then I state to you, that he was known to the public officers of the crown, as one who was in their employ and service, as one who secretly paid attention to the matters which were going on, and who gave information to the rulers of this country, when time and opportunity served. Persons of that description have in some instances endeavoured to conceal themselves with secrecy, and may perhaps have succeeded. But he was a person that was well known, and could have no hope or expectation that he could betray his trust without the attendance of a great and dreadful consequence as the ultimate result. What temptation had he, therefore, to play doubly false? did not every motive whatever incline him to be true to his employers under government, and what inducement had he to act otherwise? He was known to the officers of the crown, as well as the situation in which he was acting. Can you, therefore, gentlemen, suppose, that with a millstone about his neck, he should voluntarily, and without any temptation whatever, sink himself to the lowest pit of ruin, disgrace, and death? No, gentlemen, you cannot, even for a moment, indulge such a rank supposition; unless he had been completely insane, he could not possibly have acted in this manner, it was so absurd, so strange, and past all human belief. Had he really meant to act in this irrational manner, he must be perfectly mad. "The fool in scripture who scatters firebrands and death, and sayeth am I not in sport," was a wise man to him, or to any one, who without any earthly object could foolishly consign his fame and existence to utter and certain destruction. If this gentleman, in short, had possessed one particle of sense, he could not possibly have acted as it is pretended; the presumption is so strong, I hold it so conclusive, that I do in fact think there cannot be any thing more said upon it; and I do say farther, that it will turn out to be a matter of extreme danger, if this man is to be abandoned to his fate.

Gentlemen, I have some idea that this unfortunate and unhappy man has been deceiving himself, and that he did not openly make a full and fair discovery of all the particulars and circumstances with which he was acquainted, when examined by Mr. Sheriff Clerk. This conduct is easily explained and accounted for; the sheriff says he was unwilling to speak out; so he was, but what was the reason? it was because the person he kept up correspondence with, the lord advocate, was not present, to whom alone he very naturally wished to disclose himself. I do not at all wonder at his refusing to speak out to the sheriff upon his examination; and of his desire to delay till he had an opportunity of seeing the lord advocate himself. He was in a habit of correspondence with that honourable lord, if he was conscious that he was acting in the character of a spy (for I will not mince the matter), it was extremely natural that he should wish on every account to make his situation known to as few persons as possible; he is accordingly unsatisfactory to the sheriff, which must be allowed in this case to be at least a pardonable instance of caution. He does not say any thing; but he expected the lord advocate in town in a day or two, and then he would tell his case.

It is also said that when examined by the sheriff, he would not give an account of the arms that were found in his house. Here the same answer as that given just now most aptly and readily occurs. He, very wisely considering the delicate situation in which he stood, would not give intelligence to any one, but to the fountain head, to him only with whom he was in the habit to communicate; he would give his information to him alone, and I have given a very good reason why he should wish to communicate it only to that gentleman. His wish for a temporary concealment, sufficiently explains the evasive account he gave of the pikes when first examined; for it was not a true account with respect to these pikes which he then gave. I will not allow him to say, that he meant to sell them or make a trade of them, but I will say he had them in his house, and for what purpose? that he might have them in security, in such a situation that no danger should happen to this country; it is in evidence they were in a clothes' press, locked up, and not left in the way of any wild or rash young men, who might use them to bad purposes; they were put there till he should have an opportunity of giving his account to the lord advocate, and this examination of the sheriff accounts for and explains the fact in the most conclusive manner. Gentlemen, I will and must lay a great deal of stress upon the situation in which this person was placed; I will also mention, that very dangerous consequences would ensue were this unfortunate man to be abandoned to that fate which now dismally hangs over his head; we all know that in the present political state and government of this country, it is absolutely necessary that those who have the superintendence and management of public affairs, should be furnished with secret intelligence from every quarter of the kingdom where danger of any kind may possibly take root: without this advantage, which I must consider as in every respect a necessary one, the rulers of the land would, in many instances, be less able as well to ward off or resist the impending storm, as to cut the root of the evil by the cautious expedient of timely and seasonable prevention. For this purpose are persons, such as the prisoner at the bar, unquestionably necessary; but if he falls, I question if any one will again be found so hardy as to enter the list in such a dangerous employment. Gentlemen, I state to you the fact only, and leave the application to your deep consideration.

Gentlemen, I am happy to think, both upon your account, and my own, that I am now arrived at the close of my labours, and that I shall have little or no occasion to trouble you farther upon this case; if, gentlemen, I am right in what I maintain to be the true and just construction of the law of England as to high treason, there is an end of the question; as the overt acts, laid in this indictment, bear not at all upon the personal danger of our gracious sovereign, neither do these acts come up to the measure of what is necessary to make out a conspiracy to levy war of the first or highest degree noticed in the distinction. If, on the other hand again, there is not evidence sufficient to make out the overt acts charged, the man is safe; for the failure of the crown to rear up their fabric, makes a sufficient case in my favour. Again, if you shall be of opinion that the facts laid and charged in the indictment, and of which there is no doubt some proof, were such as would have been attended with dangerous consequences, only if followed up, I do think that the prisoner may stand firm and cool in that situation in which he is now placed; for the whole mass of the evidence undoubtedly shows, that the plans in contemplation, if ever seriously thought of, were such as never could have been attended with success, so that the alleged danger to the constitution never had in fact any existence.

Now, whatever, gentlemen, shall be your opinion upon the case before you, certain I am that you know well your duty; and though it is, I believe, the first time you have sat in a court regulated by English procedure, you have nevertheless all of you been upon juries of your own country, where the fate, life and character of an individual was at stake; you know what are your powers, your privileges, and your duties; you know you are entitled to bring in whatever verdict shall be consistent with the dictates of the human mind and your own consciences; you may bring it in either specially or generally as you shall think fit; if you find that the facts charged in the indictment are proved, you may also find the defence I have made out for the prisoner, and I think fully made out, also proved; or, you may steer the safest of all courses, and find a general verdict of Not-Guilty. Gentlemen, you are to judge yourselves of the verdict you are to pronounce this day; you have paid due regard to the evidence, and you have honoured me with that attention in endeavouring to throw this additional light on the case, that I can have no doubt but that the judgment you are now to give will be founded on justice, tempered, however, I trust, with a due portion of mercy.

But one thing more, gentlemen, and I am done; though we are engaged in a bloody war with an ancient, inveterate, and formidable foe abroad; and though it is rumoured about that a treacherous enemy, fraught with danger, lurks within; and though you must also well know that there have been such deeds done in a neighbouring country as seem to leave a threatening and impending danger louring over this our native land; these are misfortunes which we must all as good citizens regret and strive to avert, but they are such as you are not in this case at all to regard; they are circumstances which may affect the public mind, but can have no weight upon your judgment; for, gentlemen, you have fully studied this case, you are men of property and high respectability, you have God and a good conscience before your eyes, and you cannot fail to do right, and to act justly. If, then, you are of opinion that the public accuser both in law and evidence has made out his case, your determination will thereby be fixed; but if not, which I trust is the fact, your ultimate resolve must be equally fixed and decided; whichever of these shall be the result, to you, gentlemen, as fellow-creatures, good subjects, and honest men, sitting in your supreme tribunal, does the prisoner at the bar, with willing confidence submit. If the cup of iniquity is full, bitter, bitter indeed must be the draught, but if it is not, and that such, I trust, will this day be your opinion, I know that I shall see the just and humane arm of the law dash it untasted from his lips.

REPLY.

The Lord Advocate.—My Lords, and Gentlemen of the Jury;—However much I may differ in point of law from my friend who has just sat down, however much I may differ from him in many of the propositions which he assumed in his opening of the defence, it will be to me, in many respects, a more painful task to review the evidence which has this day been laid before you, on the import of which Mr. Hamilton and I are equally at variance.

There is one observation, with which he concluded, to which I must profess my most complete and most hearty assent. In any case, of any kind whatever, submitted, in the course of criminal proceeding, to the consideration of jurymen—and much more in a case of this awful and solemn nature, which you are at present to try—God forbid, that from the circumstances which have occurred in another country, or from the circumstances which may occur in this country, any general opinion, or any general prejudice, however laudable that opinion or that prejudice may be, should lead your attention, for one moment, from the cool, the candid, and the impartial consideration of the evidence which is laid before you, which is the only text to which you can look, and the only subject on which you are at liberty to decide. But when I state this, gentlemen, I know that it will follow from the same motive, and that it will flow from the same principle, that be the consequence of that verdict, which your oath, and your conscience, and your duty to your

country lead you to give, what they may, if justice demands a verdict against the prisoner at the bar, you must satisfy your oaths and your consciences, and will return that verdict against him.

In a trial which has lasted now for seventeen or eighteen hours, I hope, in summing up the evidence, which it is my duty to do, and in replying to those observations which have been just now stated upon the part of this unhappy prisoner, that I shall consume as little of your time as I possibly can; and I have determined, upon that account chiefly, though still, I trust, without departing from my duty, which upon all occasions must be the only rule of my conduct, to abridge very much what, in the course of hearing the evidence read and the testimony given, it was my intention, at an earlier period of the trial, to have stated for your consideration. I shall confine myself to those points of the case which have all along struck my mind as decisive of the guilt of the prisoner; which, in spite of every wish that, as an individual, I entertained to excuse in my own mind the offence, and explain away the facts which have been imputed to him, and which I have not, till the present moment, been able to satisfy my own mind upon, which do not press upon it still as forcibly as when the circumstances first came under my consideration; and which, exclusive of those circumstances, which in defence have been stated for him, and with which his counsel concluded, but which appear to me to be circumstances which do not exculpate the gentleman, have, after all the attention I could give to his former situation, only tended to aggravate, not to extenuate his guilt. If you shall be of an opposite opinion, I shall most heartily acquiesce.

If it should be your opinion, either that this scheme was, as my friend has attempted to persuade you, a wild, absurd rhodomontade, formed in frenzy, conceived in madness, and never seriously intended to be carried into execution; or, if you should think that the part this man played in it was merely for the purpose of detecting it, and in due time to do his duty to his king and country by divulging it, in God's name return your verdict in his favour; and, I repeat it again, most sincerely shall I rejoice if your own impartial minds will permit you to do so.

I stated that one respect in which I differed from my friend was, on the law which he in this part laid down; that a conspiracy to levy war was not an overt act, tending to show compassing or imagining the death of the sovereign. It is one of the peculiar blessings of the constitution under which we live, that the law of treason—although occasionally, during some centuries, additional statutes were passed which added to the code of law upon that subject—that from the days of Edward 3d, to the present moment, the same code of laws subsists which existed then, and which, I trust, will continue to exist as long as Britain is free.

Let it not then be said, or as it was said to-night, let not your minds be misled by the idea that the law of treason, according to that definition of it which was given by my brother in the morning of this day, and which I shall also give in a few minutes, not in my own words, but in those of the best of men and lawyers that ever existed, holds out precipices under the feet of the subjects of this country, which they are not aware of, and which they cannot discover, till they drop into the pit which has been laid for them. I never can conceive, that a consultation for a traitorous purpose, for levying war against the king or government of this country, or taking steps to compel the king or the government to alter their measures by force, or that a consultation for a purpose directly touching the personal safety of the king, is not an overt act sufficient, in the common sense of every man who hears me, to prove an intention upon the part of the consulter, to compass and to imagine the death of the king. The doctrine which my learned friend laid down, I understand to be this: that unless a war is actually levied, a consultation to levy that war, is not an overt act of compassing and imagining the king's death. If the war (whether it be with the pomp of war or not, is perfectly immaterial) be directed against the person of the king, or if the consultation or scheme has, in its object and tendency, such measures as must necessarily, in the completion of them, bring him under restraint or into danger, the best and most established authorities we have in the law of England, uniformly concur in declaring, that it is an overt act of compassing his death; and although it is not material for me to show, that the consultation was directly and immediately intended to the murder of the king in his natural capacity, yet, I think, if I attended to the evidence at all, the proof this day laid before you did, distinctly and positively, go that length. That upon the part of the person who was the principal framer and ringleader of this conspiracy, there was a serious consultation for putting restraint upon the king by force, and compelling him, by intimidation, to alter the measures of his government, under the penalty of taking the consequences if he dared to refuse; that precise fact was brought out in evidence, and brought out by evidence directly against the man who is now standing upon his trial before you.

Gentlemen, I shall beg leave to read two passages, both of them are short, the words of Mr. Justice Foster and the words of Mr. Serjeant Hawkins, because they put the law in such plain and distinct terms to the understanding of every body, that I am sure, when I read them, I shall not have a word more to say in explanation or in illustration of them. Mr. Justice Foster, after stating that risings or insurrections for a particular purpose, do not fall under the idea of high treason, expressly lays it down,—"But every insurrec-

tion, which in judgment of law is intended against the person of the king, be it to dethrone or imprison him, or oblige him to alter his measures of government, or to remove evil counsellors from about him, these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war or not. And every conspiracy to levy war for these purposes, though not treason within the clause of levying war, is yet an overt act within the other clause of compassing the king's death; for these purposes cannot be effected by numbers and open force, without manifest danger to his person."

Gentlemen, I hope, when you come to consider the evidence, you will keep this short, this distinct summary of that law of treason in your minds; and if the facts which are proved, and which I shall feel it my duty to recapitulate, do not amount and apply precisely, and almost in the very words, to the authority which I have just now stated, then I shall have no objection to abandon my cause, and the cause of my country altogether.

I said that I would read the words of Mr. Serjeant Hawkins, as the only quotation I shall farther give; he says—"As to the first point, that of conspiring the king's death, it seems clearly agreed by all, that conspiring the king's death, and providing weapons to effect it, or sending letters to incite others to procure it, or actually assembling people in order to take the king into their power, and all other such like notorious facts, done in pursuance of a treasonable purpose against the king's person, may be alleged as overt acts, to prove the compassing his death.

"It has also been adjudged, that the levying war against the king's person, or the bare consulting to levy such war; or meeting together and consulting the means to destroy the king and his government, or assembling with others, and procuring them to attempt the king's death; or printing treasonable positions, as that the king is accountable to the people, and that they ought to take the government into their own hands, may be alleged as overt acts, to prove the compassing the king's death."

Gentlemen, the authority of lord Coke was referred to, in order to controvert this proposition. Is it likely, gentlemen, that this opinion of lord Coke's, had it been a solid and well-founded opinion, would not have been held to have been law at this moment, or that you would have found subsequent writers declaring the reverse, and quoting, in support of their propositions, not the trials of treason alone, which have occurred between the days of lord Coke and the present moment, but cases before that period, and particularly a case that is quoted by lord Holt and chief justice Pratt, two of the first lawyers and best of men that England ever saw at the head of her courts of justice, which existed long before the time of lord Coke, the case of lord Cobham, in which this very point was fully discussed, and then fixed and settled upon a foundation never to be shaken? I will state to you the words of chief justice Pratt, in the noted case of Christopher Layer, who was indicted under a train of circumstances, for compassing the king's death, similar, in some respects, to those stated in the indictment against the prisoner at your bar, but dissimilar in this respect only, that when you come to compare them together, the case of Layer, and the circumstances of consultation proved against him, and for which he was convicted, and suffered, shrink to nothing in comparison with that extent of conspiracy, that degree to which the traitorous scheme now before you had advanced towards completion; and that serious and well-arranged system of measures, which was not only devised, but actually in forwardness, and carried partly into execution, by the orders, and under the directions, of the prisoner at the bar.

Gentlemen, I blame not my learned brother for arguing as he has done, and extremely well, and stating every thing he could, in a case where a man stands in that dreadful situation, in which the prisoner now does. But when he has stated as law, what I apprehend is not; and brought forward to your attention points, which, if ever dubious or debateable, have long since been settled and put to rest, it is my duty to set the matter to rights, and I shall do so in the words of the chief justice who presided in the trial of Layer, where the self-same plea in law was urged by Mr. Hungerford, counsel for Layer, in arrest of judgment.

In that particular case, what were the words of the chief justice?—"Mr. Hungerford, we would hear you on every matter, but consider whether you are not offering a matter in arrest of judgment, that hath been determined against you a hundred times? Hath it not been constantly allowed, as an overt act of treason, in compassing and imagining the death of the king, if the parties did meet and consult, and agree to levy war? Hath it not constantly been agreed, and doth it not stand allowed? Now to persuade us, at this time, to overthrow the resolutions taken by our predecessors, is such a thing as is not right.

"Do you think we will give a judgment, contrary to what our learned predecessors have given in cases of the greatest moment?

"If I thought it was of any effect I would not grudge spending time to hear you, but you must agree it has been over-ruled a hundred times."

Standing upon this authority in point of law and liable to the correction of the Court if I am wrong in stating it, I come to what I feel my peculiar duty, in this stage of the trial, to sum up the evidence, and to reply to the observations stated against it, on the part of the prisoner.

Gentlemen, though the indictment is branched out, into a variety of different overt

acts intended, in point of form, to embrace every possible circumstance we had to prove against him, and calculated out of mercy, nay out of justice to the prisoner, to explain to him every thing which we had to urge against him; yet it is material for you to know, that if we succeed in proving only one overt act we are entitled, though all the other seventeen (as I believe there are eighteen) were not proved, to a verdict against the prisoner.

But the matter rests not upon such narrow ground; because if I consider this evidence right, every word that is stated in that indictment, however diversified in expression, and varied in form, is completely, and fully, and distinctly proved before you.

Gentlemen, the charge against this man is comprehended under two distinct heads:

In the first place, a conspiracy existing in this country, not confined to Scotland alone, but extended also to England for calling a new British Convention, as the writings and witnesses have told us, the purpose of which Convention is distinctly spoken out by all those writings to have been nothing less than a bold, audacious and desperate attempt to introduce something like the French government among us, to level the present order and establishment of things, and, in the apprehension of the conspirators themselves, to bring upon this country all the evils of anarchy, unless prevented by the wild, the absurd, and the ridiculous scheme which those conspirators had devised, in the moment of the dissolution of the present government, for substituting in its stead something which they fancied was to be more permanent and free, and more calculated for the good of their country, and for the good of mankind, than that for the downfall of which they were conspiring.

Gentlemen, if I stopped here and went no farther, I should be entitled to say I have proved my case: for the king being, what I trust he will always remain to be, an essential and a component part of the British legislature, if I prove this man accessary to a conspiracy, which had for its object the subversion and overthrow of the legislative authority, of which the king forms a part, I have proved him guilty by the sound construction of the statute of Edward 3d. of compassing and imagining the death of the king; because he could not hurl the king from that place which he holds in the legislature, and reduce him for a time to bondage, without bringing his personal safety and life into danger, and which amounts to what is described in the act of parliament, which passed five centuries ago, in Edward 3d's time, as compassing and imagining the death of the king.

This I take to be the sound construction of the act of parliament. The law of England, which is now the law of this country in matters of treason, and has justly been so since the union, when our allegiance was the same, and when the breach of it ought to be punished in the same manner, is peculiarly jealous of the safety of the monarch. With what justice it is so, with what good sense, with what knowledge of mankind the parliament of Edward the 3d, who were so famous for passing this and other such statutes, as to obtain in history the appellation of the blessed parliament, and which, I hope it continues to deserve, declared the bare imagination of measures tending to effect the life of the sovereign to amount to high treason, is fully evinced, not only by the history of succeeding ages, but by the recent experience of those things which have happened in a neighbouring country, and to which I am entitled to advert, and which justifies that jealousy with which they guarded the life of their monarch, and erected a barrier against even the consultation of the subjects of this country to any attempt which could fall under the definition of compassing or imagining the death of the king.

Will you then, gentlemen, permit this man and others engaged in such a detestable and dangerous conspiracy, to be excused under the idea of an idle and absurd rhodomontade? will you permit them to go free under the more specious but false pretext of general reform of national grievances, or suffer either restless ambition, or the mad desire of innovation to break through that barrier of strength, of respect and of security with which the wisdom and policy of our ancestors have encircled the person of the prince, and established the stability of our constitution? We have not indeed far to go back for evidence of the danger to which such measures are liable; for if the barrier of loyalty and respect is once permitted to be assailed with impunity by every one who takes it in his head to do so, it will soon indeed be broken completely through, the constitution and government itself subverted, and the life of the monarch not only endangered, but forfeited, merely because he has the misfortune to be the chief magistrate.

Gentlemen, I have just now stated what the parliament of England has done, in its justice, for the safety of the king. I have now to state, what to its immortal honour it has also done for the most unbounded security to the person accused of treason. Look to the forms of the law of treason which now, for the first time since the union with England, we have the misfortune to be in practice acquainted with; consider the manner in which the charge is preferred against him; consider the time for preparing his defence with which he is indulged; that he has a list of the witnesses and of the jurors who are to serve upon his trial furnished to him, at least ten days before it; consider his unbounded power of challenge, as large as can be admitted of, consistent with the administration of justice; that twelve men sitting upon his trial must concur in finding him guilty, and I venture to affirm, that the country never existed, or that

history tells us of, where the safety of the subject was under such a charge so amply protected, where we are tied down to prove every thing we aver against him, and last of all, an overt act is to be found by you, to have been committed before you can find a verdict against him; and I say the human mind cannot conceive a possibility of trial more fair for the prisoner, or a system of law provided that could be more effectual to secure, I had almost said the imdemnity of a man who is guilty.

Gentlemen, I stated that the first point was the conspiring to call another British convention. And if I have proved that which I stated in point of law, such would have been, by the construction of the statute, an overt act of compassing the death of the king. But I rest not upon that alone, because I say the other not more but equally material point of the cause is, that in this country a consultation did take place, not only for the purpose of compelling the king to alter his measures by force, and a consultation alone would have been of itself sufficient, but in that consultation the person of the king was directly pointed at, his personal safety was to be brought into question and danger; and I go farther, and state, that short of the actual completion of that plan, short of an actual insurrection, short of an actual arming of every person in Scotland, who, by emissaries, they could arm for that purpose, the consultation was followed up, and prosecuted to the utmost possible extent. It was prosecuted to an alarming extent. God knows where it would have stopped, if it had not been for the goodness of Providence, for it was stopped by an accidental discovery. It was stopped by a most extraordinary discovery, and after the measures which they had taken in the prosecution of the consultation had been, though but for a very short time, actually in a state of execution. If these things are proved (leaving at present Watt's defence out of the question) I shall be at a loss to discover how you can hesitate in the smallest degree upon the subject. I shall run over the evidence upon the first point very briefly, because it consists chiefly of written evidence, and that evidence has already been read to you by the proper officers of the court; and because I doubt not you will, when you deliberate upon your verdict, if you find it necessary, yourselves look over those material papers.

You will remember in general, that as early as the 17th of May, 1793 and immediately after the House of Commons had thought it consistent with their duty to reject the petitions for a reform in parliament, a letter appears from a Mr. Hardy, secretary of the London Corresponding Society, asking from Mr. Skirving, with whom we are all acquainted, what more effectual measures could be now attempted. You will remember Mr. Skirving's answer of the 25th May, equally well proved and of his hand-writing, proved to be found in the possession of Hardy, as Mr Lauzun has told you, when Hardy was apprehended under a warrant from the secretary of state. You will read that letter; I had much to state upon it, I had marked several passages of it as fit for your attention, but which at this early hour, I shall omit, making on this letter only one observation, that the writer of it seems to have been a very wild enthusiast to have seriously fixed in his idea, that the present government was to fall into ruins, and that anarchy would ensue in consequence unless they in the mean time, unless Hardy and Skirving, with the aid of those societies, much too numerous I am afraid for the public good, should be prepared with their new system of government with which they were occupied. After reading that letter, it will be for you, gentlemen, to consider whether these men were engaged in a wild, absurd rhodomontade; or, whether they were not seriously occupied in forming a plan of organization, as Skirving terms it, which they were to be ready to substitute in lieu of the edifice they thought was about to fall into destruction. I shall pass over several of the other letters that are proved to have passed among these people, between the months of June and November last, when the British convention of eternal and notorious fame was established in this city. You find Mr. Skirving, then corresponding with Mr. Hardy, the secretary of the London Society, which as Taylor and Gosling told you, met in January last, to the number of 1,200 people at the Globe tavern, and as late as April, to more than 2,000 persons. You find this London Corresponding Society choosing members to go to that Convention. To us it is matter of notoriety that those two delegates are suffering this moment for their conduct in that Convention, that just punishment which the justice of Scotland awarded against them. You find by the evidence of Scott and others, there were other societies in England who sent delegates to this Scotch Convention. You have it in evidence from that Mr. Aitcheson whom we saw to-day, and who acknowledged a paper with his hand-writing upon the back of it, intituled "Citizen Sinclair's Amendment of Citizen Callendar's Motion;" and you have the minutes of the Convention itself proved to be the writing of Ross and Aitcheson. From these and from the evidence of Ross and Aitcheson, it appears that this motion of Sinclair's with which you are so well acquainted, was solemnly and deliberately adopted by the Convention; and followed up on the 28th November, by a motion from citizen Margarot, viz. "That a secret committee of three, with the secretary, be appointed to determine the place where such Convention of Emergency shall meet: that such place shall remain a secret with them, and with the secretary of this convention; and that each delegate shall, at the breaking up of the present session, be entrusted with a sealed letter, containing the

name of the place of meeting: that this letter shall be delivered unopened to his constituents, the receipt of which shall be acknowledged by a letter to the secretary, preserved in the same state until the period shall arrive, at which it shall be deemed necessary for the delegates to set off." You have it proved by Scott that they were dispersed by the magistrates and sheriff on two successive days. It is proved that this Convention attempted once to assemble in the face of lawful authority, and that upon the second occasion, Margarot called out expressly to the Convention to recollect they had the preceding evening voted themselves permanent, and they were not at liberty to retire. You will consider these circumstances, and connect with them the two other printed papers on the table, proved to contain the proceedings at the Globe tavern a few weeks thereafter, and the proceedings at Chalk Farm the 14th of April. I will not fatigue your attention or distress you at this hour of the morning, by reading the one or the other of these papers; much had I to say much had I to argue on each, but I leave both to your impartial consideration.

The resolutions at the first, amount to a direct attack on the legal proceedings of the courts of law in your own country, assert in several passages in the strongest terms, their determination to resist the legal authority of this country, and justify the Convention for that conduct for which the jury of Scotland had convicted their delegate Margarot, and for which he was sentenced to Botany Bay. They take upon themselves the whole merit, and state the whole proceedings of the British Convention to be such as to demand applause, and avow they will continue to follow them in all particulars till the last moment. The resolutions on the 14th April, attack in terms still more violent and outrageous, the proceedings, which they say disgrace the supreme court of criminal justice in Scotland, and declare that these ought to be considered as dissolving entirely the social compact between the English government and the people, and driving them to appeal to that uncontrovertible maxim of eternal justice, that the safety of the people is the supreme, and in cases of necessity, the only law; that a measure then under the consideration of parliament, the employing Emigrants in British pay, on which measure parliament had alone the power to determine, they state, that on no pretence whatever, ought the people to submit to it; they state, as a question of doubt, what Mr. Taylor told you was at first a direct assertion, that the king and his ministers had been guilty of high treason in raising money by subscription; and this, and arming one part of the country against the other, were the measures which brought Charles 1st to the block, and drove James 2nd and his posterity from the throne. If arming a free and loyal nation against a foreign enemy, be the measure which these persons consider as arming one part of the people against the other; and if they favour the cause, and are desirous to bring that enemy into this country, then they have a right to say they are a part of the people against which the others are armed. Since they take it to themselves, it is for you, gentlemen, to consider to what extent this resolution goes, and of what complexion are the members of this London Corresponding Society. The concluding resolution states their conviction, "That a steady perseverance in the same bold and energetic sentiments avowed by the Friends of Freedom, cannot fail of crowning with ultimate triumph the virtuous cause in which we are engaged." What cause? the cause of the British Convention, which in the preceding resolutions they have so warmly extolled as being in strict conformity to the wishes and instructions of the society; and they conclude this inflammatory and treasonable paper, by observing, since, "whatever may be the interested opinion of hereditary senators, or packed majorities of pretended representatives, truth and liberty in an age so enlightened as the present, must be invincible and omnipotent."

In a subsequent part of their address to Joseph Gerrald, they have expressly stated, "The equal laws of this country have for ages past been the boast of its inhabitants, but whither are they now fled? We are animated by the same sentiments," (talking of the British Convention,) "we are daily repeating the same words, and committing the same actions for which you are thus infamously sentenced, and we will repeat and commit them until we have obtained redress; yet we are unpunished! Either therefore, the law is unjust toward you, in inflicting punishment on the exertions of virtue and talents, or it ought not to deprive us of our share in the glory of the martyrdom."

What is this but falsely stating that the laws of the country are not administered with equality and justice? What is it but vindicating and making their own, the whole proceedings of the British Convention, and those persons who have been punished for those proceedings, and avowing their determination to commit and persevere in the same criminal conduct, till they obtain redress? They hope to have their share in the glory of the martyrdom! I hope that the last part of their prayer is not far distant. What I have read now, is from the resolution of the 14th of April at a meeting at Chalk Farm, where it is proved there were no less than 2,000 people present. At the meeting at the Globe tavern in January, they adopted a similar resolution to that on your table, which was proved to be Aitcheson's own hand writing, which was for calling a general convention, which in fact was to assume all the powers of legislation over this country, and to exercise a supreme authority in any manner it might think proper; and which, in case parliament should think fit to land foreign troops, in case they should think fit to sus-

pend the Habeas Corpus Act, which has been done (and for the wisdom and necessity of that measure, need I refer you to any thing else, but what this day's evidence has presented to you?), and in several other given cases, was immediately to be summoned for the clear and indubitable purpose of rebellion against the legislature of Great Britain.

Before I leave this, attend also to the letter of Hardy, I mean the printed letter which we have traced home to the possession of Miller of Perth, and Mitchel of Strathaven; that paper, combined with those resolutions which I have just now read, appears to me, and I trust and know it must appear to you, as nothing less than sounding the alarm for a rebellion in this country.

"Citizens, the critical moment is arrived, and Britons must either assert with zeal and firmness their claims to liberty, or yield without resistance to the claims that ministerial usurpation is forging for them. Will you co-operate with us in the only peaceable measure that now presents itself with any prospect of success. We need not intimate to you, that notwithstanding the unparalleled audacity of a corrupt and overbearing faction which at present tramples on the rights and liberties of the people, our meetings cannot in England be interrupted, without the previous adoption of a Convention bill, a measure it is our duty to anticipate, that the ties of union may be more firmly drawn, and the sentiments and views of the different societies throughout the nation be compared while it is yet in our power, so as to guide and direct the future operations of the Friends of Freedom. Rouse then to one exertion more, and let us show our consciousness of this important truth. If we are to be beaten down by threats, prosecutions, and illegal sentences, we are unworthy, we are incapable of liberty. We must however be expeditious, Hessians and Austrians are already among us, and if we tamely submit, a cloud of those armed barbarians may shortly be poured in upon us. Let us form then another British Convention. We have a centrical situation in our view, which we believe, would be most convenient for the whole island; but which we forbear to mention, intreating your confidence in this particular, till we have the answer of the societies with which we are in correspondence. Let us have your answer then by the 20th at farthest; earlier if possible, whether you approve of the measure, and how many delegates you can send, with the number also, if possible, of your societies.—We remain yours in pure affection.—The London Corresponding Society,

"T. Hardy, Secretary."

"For the management of this business we have appointed a Secret Committee; you will judge how far it is necessary for you to do the same."

Now, having established this close union with the London Corresponding Society, united in the same measures, sending delegates to the same place, and taking up the cause of the British Convention where they left it, and corresponding again with every part of the country, let us consider what are the inferences which you are to draw from these proceedings. After the evidence was read to you, you could have no doubt, that this other British Convention, which was to rouse itself to one exertion more, was to be a Convention, not only as strong but more effectual than the one in Edinburgh, dispersed six months before. This letter of Hardy's appears to have been sent to Stock, and a number of copies given by him to George Ross, the man in whose house the Committee of Union met, and in whose house the Committee of Ways and Means met; a fact which one of the witnesses, with a very mean equivocation, attempted to deny, for, when I asked him if he went to the Committee of Ways and Means, he answered, no, he went to the Gazetteer Office; but it turned out, that the Gazetteer Office was the very place where these Committees always met; George Ross was a member of the British Convention, and of the Committee of Union also: and George Ross told you, he sent these printed letters to different places in Scotland, particularly Perth, Paisley, Strathaven, and Dundee. In this you find him confirmed by the evidence of Miller and Mitchell. The copy sent to Perth is on the table, addressed in the hand-writing of George Ross: and Miller admits, that he received it from Edinburgh by post, and he says, in consequence of that invitation, the club at Perth agreed to choose a delegate, who was to be ready to set out, and to attend in that place, then kept a secret where Mr. Hardy should afterwards notify the Convention should assemble. This happened in April, and the little man, Taylor, I believe told you, that it was understood in London, that the Secret Committee had fixed the place, and that the Convention of Emergency was appointed to meet about the beginning of May. I took his words down, for the coincidence of dates struck me to be extremely material. You have it in evidence, that Mitchell of Strathaven received such another letter; he acted as chairman of the United Societies of Stathaven, and various other villages in that neighbourhood, who met, as Mitchell says, in consequence of that letter, and likewise chose a delegate, to attend the proposed Convention. The letter itself, signed by Mitchell, and dispatched by him to London, notifying the election of the delegate, was afterwards found by the messengers in Hardy's possession, and is now on the table. It is dated the 9th of April, which tallies again exactly with the periods of Miller and Taylor.

From how many other towns in Scotland, and from how many towns in England they had received assurances of co-operation, in the one great exertion which remained, it is

not necessary for me to inquire; it is enough for me to have proved what I have done, and I now leave it for your consideration, whether I have not, clearly and satisfactorily, made out, what I hope the prosecutor always will, in such a case be obliged to make out, ere he can ask a Jury to believe the existence of a conspiracy or treasonable plot; one of as serious, as alarming, and as extensive a nature as ever was formed in the annals of our history. I confess, gentlemen, that when in a different capacity, I first heard of the existence of this extraordinary scheme, it struck me, that it could not be serious, as it bore all the marks, and the similitude of fancy and madness. But the evidence this day has proved, that this scheme was not the fancy of the moment, not the effort of any one, two, or three individuals in a corner, acting under the influence of an overheated imagination, but part of a serious, and a deep conspiracy, which began eighteen months ago, which gradually grew in maturity, as the parties, of which it was composed, continued to increase in activity, and boldness; and has now, by dint of unwearied industry, extended to numbers which we should have esteemed incredible: when you find one meeting of 1,200 persons publishing 100,000 copies of their resolutions, to be sent all over the country; and a second, of 2,000 and upwards, publishing no less than 200,000, because the former had not been sufficient; when you find it thus gradually increasing, will you, gentlemen, permit this conspiracy to go on in its progress? will you suffer it to rear its head any longer against the legal constituted authority of the state; to hold in contempt, and attack with impunity, the laws and the justice of the country, and to justify the conduct of condemned criminals, with an avowed determination to repeat the same crimes, and never to desist, till they have obtained their object?—All this you have in evidence; and the point fit for you, as a jury, to consider is, how far it is brought home against Watt. It is brought home against Watt, by this evidence; in the Committee of Ways and Means, which assembled in the house of George Ross, the man who received the paper from Stock, that letter was laid before the meeting, in the presence of Bonthrone, Stock, Watt, and Downie, where an answer was concerted to that letter, and Watt, who is proved to have been alarmed with respect to corresponding with Hardy, hesitated, till advised by Stock, whom I am entitled to state as a traitor, because the grand jury have found a bill of indictment against him, removed his doubts, by assuring him he had devised a proper mode, in which Hardy and Watt could correspond with safety. This circumstance, I am afraid, proves that this man, artful and cunning as he was, knew sufficiently well the criminal nature of the correspondence in which he was engaged, and from the peculiar mode in which M'Ewan answered the question put by the prisoner himself, he was, notwithstanding, fully resolved to carry it on. If the excuse of ignorance was admissible at all, some kind of apology might perhaps be found for a person, such as Bonthrone, such as M'Ewan, or a man similar to Mr. Aitcheson, or any of those persons, who, after being misled by others more designing than themselves, embarked in schemes, of the guilt of which they were utterly incapacitated to judge; and which, from their situation, they could not discover; who were gradually led as many of the British Convention were from less to more, without knowing the full extent of the crime they had committed. But could Watt plead that apology? He was not a member of the British Convention, but he knew the proceedings of it. He could not be ignorant of the punishment of the ringleaders of that Convention: and yet you find him, after the sword of justice had reached those men, engaged in the same measures, and carrying them on, in that very place in which they had suffered for their offence, by a sentence more lenient than it merited. It was with his eyes open, therefore, he must have done all this.

The only use punishment ever was contrived for in this world, for the sake of example to others, had completely failed in regard to him. When you find him in this Committee of Union, when you find him in the Committee of Ways and Means, assisting at that committee with Stock, concerting the answer to be given to one of those letters, and consulting as to the safe and proper mode of corresponding with Hardy, and agreeing with Stock, that he was to carry with him to Hardy the answer which was drawn up upon this occasion; if you think this was an accession on the part of this man to the scheme of calling a new British Convention; if you think that his becoming a member of the Committees of Union and of Ways and Means, taking up the cause of the British Convention where they left it; and persevering, as he clearly did in the self same system is proved against him, you will then judge if he is not deeply engaged in this conspiracy, and if you will not hold him answerable for the consequences of the offence laid to his charge. I have been dwelling perhaps too long upon this part of the evidence: I hope I shall not be so long upon what remains. I state to you with perfect confidence, that if you look alone to the evidence of Bonthrone and M'Ewan, a case cannot be figured, where the facts are more completely proved than those which have come out in the evidence this day laid before you. By the laws of this country, two witnesses are necessary to prove one crime. By the law of England in common cases, one credible witness to a crime, entitles a jury to convict: but though in matters of treason, the concurrent testimonies of two witnesses are requisite, it has been uniformly held, that one witness to one overt act, and another to another of the same species of

treason, is sufficient. In the present case you have three witnesses to the treason.

M'Ewan was the first witness. I am sure when I in a few words bring to your recollection the manner in which he gave his testimony, you will join with me in paying that compliment to him I cannot pay to Bonthrone or Fairley; that he seemed desirous to tell the truth, and nothing but the truth. If you look at your notes, you will find one particular thing only excepted, which Bonthrone did not recollect, you will find every part of his story confirmed by Bonthrone, and indeed by all the others beyond the possibility of doubt.

This Committee of Ways and Means, like a self elected committee in France, was invested with full powers to conduct the business of the party in Scotland, was to turn out old members and bring in new ones at pleasure, and was not to be responsible or accountable to the persons that chose them. It consisted of seven persons, Bonthrone, Downie, Stock, Watt, M'Ewan, Aitcheson, and Burke; the two last however soon gave up their attendance, and if it is worth while to build any thing on the testimony of Aitcheson, his reason for retiring was by no means a bad one. His testimony however I shall leave perfectly out of the case. I refer you to better evidence, and evidence not to be shaken, when I direct your attention to that of M'Ewan, who tells you the purport of the plan Watt proposed, when Downie, Stock and Bonthrone were present; he tells you it was neither more nor less (it is needless for me minutely to go over the circumstances of it, than a conspiracy, not only to compel the king to alter the measures of his government, but to constrain him by force; to seize during the night the Castle, the banks, and public offices, and to send couriers to excite a general insurrection through the country, and to issue a proclamation to the country gentlemen, farmers, and others to the purpose M'Ewan has told us. An address was next to be sent to the king, stating what had happened, and if he did not dismiss his ministers and put a stop to the war, the words are, "he must either abide by the consequences, or stand to the peril of the consequenoes." In almost every particular was M'Ewan confirmed by Bonthrone, although he was not surely a willing witness for me, and equivocated as much in giving his testimony as ever a witness did in a court of justice, who was not sent to gaol for perjury or prevarication. He corroborated, however, the account of M'Ewan at least in all its material points, though with the utmost difficulty, and a difficulty which will, on your minds, have the same effect it had upon mine; that this witness said nothing but what was strictly true, and meant to keep close every circumstance he possibly could, which might be prejudicial to the prisoner, whose conduct he meant to conceal, but which, by that very reluctance, Bonthrone clearly showed he felt to be highly criminal, and which, but for the obligation he was under to speak the truth, he did every thing in his power to conceal. He concurs also with M'Ewan in describing what he felt respecting the scheme Watt proposed to them, and which, to the eternal honour of M'Ewan, he instantly opposed, by declaring he never would agree to any measure which tended to disturb the peace of the country, and to lay his country in blood; for Bonthrone declares that M'Ewan strongly disapproved of that plan, and that he joined him in doing so. Bonthron does not tell you indeed any thing with respect to the address to the king, but he tells you he was so frightened and alarmed when he heard this scheme proposed, that it is not extraordinary that if this address to the king was read in his presence, it should have escaped his memory. It does not indeed exactly appear whether this address was read at this first meeting, or not till the next day, in which case the address was not divulged to Bonthrone at all, and he never heard of it. But when you find M'Ewan supported in every thing by Bonthrone, one circumstance only excepted that does not take from the credibility of the evidence of M'Ewan, on the contrary it confirms him, and shows M'Ewan has been telling the truth: for how is it possible to believe, that where he does so in every other part of the testimony, in which Bonthrone and he perfectly coincide and agree, that in this particular he was telling a falsehood?

We had a third witness, Mr. Fairley, and here I must repeat with a stronger degree of application the observation I made on the conduct of Bonthrone: did that man, during an hour or more that he stood at the foot of that table, did he or did he not conceal the truth? you saw his behaviour while under examination, and you will think, I trust, as I do, that he was determined to conceal the truth.

We forced it out of him at last in spite of his heart; and material and conclusive as his evidence is, decisive as it is in every circumstance, even the most minute, of the guilt of the prisoner, I will not recapitulate one of them; observing only in general, that he has deponed to every thing to which M'Ewan and Bonthrone had sworn before, with this only difference, it cost him an hour and a half's work to tell you what he could and ought to have done in ten minutes, what he well knew was no idle plan, but a scheme, the criminal nature of which he was sufficiently aware of, and which he wished to bury in eternal oblivion. Bonthrone says, he was so alarmed on hearing the plan read, that he went home immediately and wrote an advertisement for the purpose of inserting it in Donaldson's next paper, but that he did not put it in. Being asked the reason, he said, that before he had time to carry it to the printer, Fairley had come, mentioning that he was to

go upon a journey to see his friends, in the course of which he was to do some business for Watt; and, that having, in consequence of Fairley's solicitation, given him a line to Watt for some money, he considered this as to a certain degree of new engaging with the committee, and on that account kept the advertisement by him. But that paper he produced, which, he said, he drew up at the time, dated 21st of April, a short while before stock appears to have left the city, and on the import of which I need not say one word. In short, take the evidence of these three men, Bonthrone, M'Ewan, and Fairley, compare and combine them together, and if you hesitate a moment in believing every thing they have stated to you, to be true, any argument which I could offer to you on the subject, would be in my apprehension, extremely idle and unnecessary.

Now, it has been said in defence of the prisoner, that granting all this to be true, it is at best an idle, incredible, and impracticable plan, and a mere consultation of measures never intended to be carried into execution. If it be a consultation for the purpose of levying war against the king, it is enough for my purpose; for that of itself is an overt act to prove the compassing and imagining the death of the king. But it is impossible for me to agree to this state of the case. I have proved that the matter did not rest at a mere consultation, but that the consultation was acted upon and followed up as far as the prisoner and his accomplices could go, and to the utmost extent in their power, till their progress was stopped by being thrown into separate custody, where they have remained ever since. It has been said that the scheme is incredible. Not long ago it would have been incredible. But let me ask you, gentlemen, have not things equally incredible lately happened? I ask you, could you have believed in the month of May 1793, that Skirving and Hardy were then conspiring against the state? Could you have supposed last winter, when the British Convention met here, that they would have dared to have openly passed a resolution in the face of the country, avowing a determination to resist the British legislature by force? Could you have believed, till the fact actually happened, that in London, there would be found men, bold, wicked, and daring enough to meet in public assembly, to the amount of 1,000 persons, to pass resolutions in almost the self-same words, to vindicate the crime of those men whom the supreme court of justice in Scotland had condemned to transportation, and avowed their determination to commit the same offence? Could you have believed, if it had not been proved to you, that they should since have attempted to assemble another, and a more numerous British Convention, similar in its nature and objects to the former, and for the purposes stated in the letters I have read? Recollect these things, and judge betwixt us, of the merit of this plea of general improbability. Recollect also, that we live not in the age of high families or powerful subjects conspiring, as in times of old, against their lawful sovereign, but in a time unparalleled not in the history of this kingdom alone, but in that of the world, when a system, originating in that country which has excited a convulsion in every part of Europe, has with a zeal proportioned to the magnitude of the object, and the desperation of its adherents, been attempted to be introduced into Britain by inflaming the multitude, by setting every man of low situation against his immediate superior, by holding out to the people the delusive idea of equality, not only of rights, but of property; which proposes to renounce all rank and order in society, and to establish what implies in it the destruction of the constitution of this country, and without which, some of the witnesses have told you, they were taught to believe they were not free, annual parliaments and universal suffrage, the false and specious pretext under which is hardly concealed a plan to introduce that confusion and anarchy which have deluged another country in blood, and which it must long continue to lament. It is the conspiracy and treason of the day which I impute to this man. Tell me not then that Bonthrone, Watt, and the others are not to be believed serious in their attempt to lift their hands against the government, when we find that the means by which the treason was to be carried on in every town and village in this country, was by seducing the ignorant and unwary, and deluding the people to obtain what, if they ever could obtain it, would end in their own desolation, ruin, and destruction. Tell me not that this scheme is unlikely on the ground that the actors apparently have not the power to be mischievous. If you show me that it is impracticable in the execution, I agree to your holding it to be an unlikely plan both in its formation and structure. But if you tell me it is unlikely to be serious merely because this Committee of Ways and Means consisted only of seven men, recollect, I beg of you, gentlemen, in what situation these men were placed, and in what character they acted. They state themselves to be the representative of the constituent, whom the constituent is bound to protect against every attack made against him, because the will of the representative is the will of the constituent. It is proved that the Committee of Ways and Means was a Secret Committee armed with the most uncontrolled and absolute authority over those who either directly or indirectly concurred in its nomination. That it possessed a power of disposing of money collected under various false pretences, to any purpose however treasonable without being called to any account for it; and that with the utmost artifice and caution, it devised and directed every possible step by which the multitude dispersed in clubs and societies throughout the country, could be brought to act together with vigour and

by surprise against the established authority and government of the state.

When I look to the circumstances proved this day beyond the reach of doubt, can we hesitate in being of opinion, that there existed in the bosom of Watt and this Committee of Ways and Means, a scheme which bears all the features of serious, black, dreadful treason, in every line and in every step which they took to carry it into execution. You find them by means of an inflammatory paper attempting to seduce the Fencibles from their duty. You find in the closet of this delinquent a font of types discovered, which the sheriff tells you he took into his possession, conceiving it something extraordinary, that a merchant and spirit dealer should have any use for such a machine, and you find the Fencible paper taken from that set of types. My brother was pleased to say, there was nothing seditious in that paper; but had he forgot the peculiar situation of the Fencible regiments on the 12th of April when this paper is dated, and will he still venture to assert, that the paper is not seditious? What else than sedition, and what less than treason can you impute to the man who at so critical a time, when all the Fencible regiments had hesitated, some been induced to refuse, and a few had to their honour agreed to march to England, to join in protecting the country at large under a threatened invasion, could be base enough, criminal enough, and daring enough, deliberately to sit down to compose, print, and publish such a paper, exciting the soldiery under false pretences not to cross the Tweed to assist in repelling a foreign invader: which holds out to them in the most inflammatory language, the danger of Scotland being overrun by foreign troops, as the only object against which they ought to guard; and what foreign troops? Not the troops of France, the only foreign enemy whose invasion we had to defend against, and to whom, from the beginning to the end of this paper there is not the most indirect or distant allusion, but foreign mercenaries, as they are termed, an expression, of which, on reading that paper, not a soldier in the ranks could mistake the true meaning. To render the meaning still more obvious, these foreign troops are described to be such as have in times past shed the blood of our ancestors, and immediately is introduced the cruel massacre of Glenco, where the troops of king William were guilty of an act which has fixed a stain which will not be soon removed from the annals of this country. They were not French troops then, but men in the situation of king William's troops; foreigners indeed, but auxiliaries, and who alone could be introduced into this country in the hour of extreme danger and the last necessity, and by the authority of parliament, whom, under the appellation of foreign troops and foreign mercenaries it was to guard against, and whom alone the author had in his eye, when he composed this printed address to the Fencibles. Will you be of opinion that there was nothing seditious in this paper, when you find the parties themselves concerned in the publication of it, conscious of their danger? Remember the evidence given by Watson, who told you that while he was standing in a shop in the Lawn Market, he saw Downie pass by, and having the curiosity to inquire after that paper or hand-bill, he followed him and asked for it. This curious gentleman is a Friend of the People and lived at Dalkeith, where 300 of lord Hopetoun's Fencibles were at that moment quartered on their march to England. Downie tells him "I have none of them, but I will take you to a place where you may get them." Where do they go? Watson could not or would not swear to the person of the prisoner; but he says, that Downie carried him to the house of a man who lived a little below the North Bridge, the very place where Watt lives; that after remaining there a few minutes, Downie and he came out. He says he did not hear Watt say any thing, or direct them where to go; but he admits understanding he was going to have his curiosity satisfied, which had not been done at Watt's house, as Downie had led him to expect: that they went directly from thence to Montgomery's shop, on the South Bridge, where Kennedy, a person who absconded the evening after Watt was seized, and who after every exertion remains concealed, and has probably by this time escaped beyond the reach of the justice of this country, went with Downie into the back shop, and in two minutes they called Watson in, when Downie threw a parcel down upon the floor, and said, he would not give it him, but desired him to take it up, adding, that "if any body asks you how you came by it, tell him you found it." For what reason Mr. Downie was not to give the parcel to Watson, but he was to find it, I leave, gentlemen, to your own consideration; the parcel contained a number of copies of the address to the Fencibles, which Mr. Watson admits, he lost no time in distributing at Dalkeith, and one of which we have traced out of his hands, directly and completely, to the person of serjeant Hardy, who produced and identified the copy, and which is proved to be the same as those struck off by order of the sheriff, from the font of types discovered in Watt's house, and is the very paper. Is it possible you can ask, or expect greater evidence of guilt? My brother stated, that the circulation of this paper, if it was criminal, was a crime against martial law, and deserved severe military punishment. Watt is not a soldier, and I am not trying him for an offence by martial law; but I am trying him for high treason, and as a circumstance showing his guilt, I have proved him to be the man to whom Downie directly went for the papers Watson asked for, and these papers are found to have been imprinted and cast off from the font of types discovered in his possession: I

found on this circumstance, among a variety of others, as convincing evidence of Watt's treason; and I maintain that the whole of them completely disproved the defence set up for him by my brother, that the plan was an absurd, idle rhodomontade; on the contrary, that he and his associates were engaged in a serious deliberate scheme of addressing the king, compelling him by force to alter his government, and of exciting and raising an insurrection against him.

But the evidence of Fairley is of itself decisive of his guilt; and, if the circumstances he has sworn to, and in which he is completely confirmed, can, upon the part of Watt, be reconciled by you, to the idea that he was in jest, and which, from the first moment I knew them, to the present, I have reflected on again and again I am bold to say, with every possible wish to excuse, in my own mind, the conduct of a man, to whom I once looked with a favourable eye, and on whom my duty, as a servant of the crown and the public, led me to bestow confidence, but without my ever being able to do so, if you can still teach me how to believe him pardonable, innocent of the treason, and that he was not completely determined in the scheme he had proposed, instruct me in that lesson, if you can, and, most truly and sincerely will I thank you. He sends Fairley to the west country, and upon what errand I need not remind you, nor of the reluctance with which Fairley was compelled to speak out. He corroborated, in every thing, what Bonthrone and M'Ewan had formerly told us, except the circumstance of seizing the banks and public offices, which, though questioned for half an hour, by my brother, the solicitor general, he swore, after repeated cautions, that he did not remember any thing about; and yet, after having left the court, he voluntarily came back, and declared, upon recollection, he remembered that also. He proves, that he was directed by this secret committee, to advise, in the different towns he visited, the establishment of collectors, to levy and remit to the Committee of Ways and Means, money to carry on the great cause; and, although he admitted that he did not know even a single person in the various towns and villages to which he was sent, it is singular that he stumbles upon the Friends of the People, and the most active ringleaders of the British Convention, wherever he goes, and is by them courteously entertained, and received with open arms.

What does Dr. Forrest state? He states, what if any doubt could remain in your minds, as to the seriousness and guilt of this conspiracy, must completely remove all hesitation; and which of itself is a damning circumstance to the prisoner at your bar: he states, and he stated it with a reluctance which showed he did not wish to load the prisoner, very much the reverse, that Mr. Fairley did communicate to him written instructions that they should provide themselves with—what? A blank followed, which Forrest understood to mean—arms: that an insurrection was soon to take place in Edinburgh; that the soldiers were either to be disarmed, or brought over to join the insurgents; a circumstance which tends also to show, for what purpose, and with what intention the address to the Fencibles was composed and circulated, and which proves Watt and Downie's confidence in the probable success of the wicked and treasonable undertaking in which they were engaged.

From whom does Fairley receive the money necessary for defraying the charges of this treasonable embassy? He gets a line, I think from Bonthrone, addressed to the prisoner, who consigns him—to whom? To Downie the treasurer of the Committee of Ways and Means. From whom, and in what circumstances and manner does he receive his instructions? Watt directs him to a shop in Edinburgh, kept by one Campbell, a hatter, one of the same kidney with themselves; and on the counter, Mr. Fairley finds a parcel lying, which he immediately takes up, and carries away with him, in order, I presume, that in the event of his being questioned regarding its contents, Mr. Fairley might, by the same ingenious device practised with Mr. Watson, be enabled to satisfy his conscience in denying that he had received it from Watt, though in truth it came from Watt alone. He goes as far as the Queensferry, ere he opens this parcel, which was to direct his whole journey; and he finds instructions, of a direct treasonable purpose, and a parcel of printed papers, directing, among other things, the societies in the country to appoint collectors over every fourteen or fifteen persons, who were to conduct and superintend their proceedings. Dr. Forrest swears to the same thing pointedly, and tells you what this institution meant: That these collectors were to be appointed over small divisions of fourteen or fifteen people, for the pretended purpose of collecting money and sentiments, but chiefly to act as commanders in the proposed insurrection. Thus were you to have a system of insurrection established, which, if such a plan could ever be carried into execution, did ample honour to the ability of the contriver; for it was not a plan, partial in its nature, and contrived to excite tumult and disorder in one city or district alone; but a conspiracy, calculated to include all Scotland, at least, and constructed in the best way to insure success, when carried into execution. It is proved, that the societies were to be previously subdivided into small bands or detachments, from twelve to twenty, each headed by their collector, who, when the moment of insurrection arrived, was to act as their leader: that these collectors were again to meet in a separate body, with a preses at their head, who was to communicate with the Secret Committee of Ways and Means, and receive, and convey to the other collectors its

directions and orders. The reason of vesting this secret committee, with that supreme controlling power which they are proved to have possessed, is now obvious. A conspiracy of this magnitude and extent, could not be conducted and managed, unless such a small number was placed at the head of it, as could ensure secrecy, till it was ripe for execution; unless these men were vested with uncontrolled powers, unless they had devised a mode of setting the machine in motion in a moment, and of conveying, instantaneously and suddenly, through proper channels, to the multitude, without whose prompt co-operation, it could not succeed, the steps they were to take, and the orders they were to obey. By the means proved this evening before you, did this committee, not unreasonably hope and expect, to make the people, not in this city and country alone. but throughout Scotland, for aught we know, perhaps in London, and all the towns in the kingdom to operate under them, as if acted upon by one mind, whilst the scheme itself was safely confined to the breasts of the secret committee, and was only divulged in the moment of its bursting into rebellion. Such is the conspiracy, the particulars of which have been fully laid before you, which was to have been acted upon, in the way I have stated, and to the extent I have just now observed.

In reviewing the evidence, I had almost omitted mentioning the circumstance of arming, which, though hardly necessary to the establishment of his guilt, is indisputably, and directly brought home to Watt. What purpose could he have in view, in providing those dangerous and extraordinary weapons? He said for the purpose of merchandise. Did the countryman, Orrock, believe them intended for the purpose of merchandise? No. Did Brown believe it? No. By whom were they paid? By Downie, the treasurer of the Committee of Ways and Means, the self same treasurer who received and disposed of the money for the advancement of that grand cause, which was to be carried into execution, by means of privately and secretly arming the Friends of the People, under different false pretences, unnecessary for me to recapitulate, but in truth, for the purpose you have heard so fully and distinctly proved this evening. Brown tells you the manner in which he was first employed in this new manufacture; and under what suspicious circumstances, Robertson, the schoolmaster, prevailed upon him to undertake executing the order, which is proved to have come from Watt. I shall not dwell on the evidence of Orrock, confirmed as he is by a variety of witnesses, farther than requesting you to give due weight to the orders he received, for fitting his instruments all to the same screw; and the complaints made by Mr. Watt, and his emissaries, that his first productions were not sufficiently sharpened. It is proved, also, that Orrock finding, on an accidental conversation with Brown, that he was also employed in the same business, took alarm at the hidling way (to use the witness's own words) in which the manufacture was going forward, and had resolved to give it up, when the discovery prevented him. Is it not proved, that Watt went, of his own accord, to Orrock, and desired this man to say, if any person asked him what these instruments were intended for, that they were making for the top of a gentleman's gate? And can you, gentlemen, in the face of all these, and every circumstance in the conduct of this man, believe for a moment, that these arms were intended as merchandise, or for the purposes of legal self defence? I know you cannot: Your oath and your conscience will not permit you.

I have gone through, I think, every thing which appeared to me necessary to observe in general on the evidence: I regret I could not say it in fewer words. Last of all comes the defence he has stated, and instructed his counsel to maintain, upon a former connexion with the secretary of state for the home department and myself. That he volunteered in forming this connexion is admitted by himself; is proved by the copy of the letter which was found in his own possession, and which, without objection on our part, he gave in evidence, and it is corroborated by the letter of Mr. Secretary Dundas, of the 5th of September, which appears to have been its answer. For having given him my evidence, and having waved any privilege which I understand would have authorized the attorney general of England to have refused it,* I take no merit; it was my duty to give this man, circumstanced as he and I once were, the benefit of my evidence upon oath, since he considered it as material, and to tell you every thing I know regarding him. You have heard my evidence, and upon that subject it is impossible I can say one word. You will consider whether it is within the bounds of the most distant probability to believe the story he has instructed his counsel to tell for him, that he meant to communicate in due time to me or the ministers of this country, the designs of these men, and that he was only watching them for the public good. From the month of July, most assuredly since the month of October last, he chose to discontinue his attendance upon me; though the proceedings of that period were sufficiently momentous, and such as to call for both his attention and mine. He says, I went to London in March, and since that could not see me: and as the proceedings of the convention were printed in the Edinburgh newspapers, his more early attendance was unnecessary. But a letter would have reached me in London in three days: and you are at full liberty to sustain, if you can,

* See the case of Mr. Horne for a libel, ante, Vol. 20, p. 740.

as sufficient, the apology he has offered for his absence from October to March, whilst he and I were resident in this city, and when he was sure I was ready to receive him with any communication he chose to give me, and which, as a faithful servant of the king and of the country, I felt it my duty to receive from him. Can it be doubted, after what you have heard this night, that he was the principal actor and prime mover of all these plans, conducted with an artifice and cunning I hardly ever knew equalled; and is it within the reach of the most charitable credulity to believe he was there for the purpose of giving information to government? and with what other purpose, or from what motive, he conducted these proceedings, and took the lead in these counsels, it is for you to determine, hardly necessary for me to hint at or inquire; but whether he did it in order to keep well with both sides, and ultimately prefer that most likely to prevail, the most charitable and advantageous view you can take of his conduct, or whether recurring to the original habits, or being misled by the conversation of those with whom he associated before he wrote to Mr. Dundas; whatever may have been the cause of the alteration of that line of conduct, I know of no circumstance occurring in that period, nor have I heard any argument deduced from it, which so far from extenuating, does not, to my mind aggravate the guilt which has been so distinctly made out against him. If he states that which cannot be seriously stated for him, which my brother's discernment would not allow him directly to state, though the inference necessarily flowed from his argument, that in all this he was playing the part of the spy and informer, that he was gradually leading these men into the criminality of a scheme of treason for their ruin, and for his own advantage, I ask you, gentlemen, will the utmost exertion of mercy on your part admit of your swallowing so incredible a story, or reconciling it to the active share he had in this business? If you can do so, good God, what opinion are you to form of the man before you, who could coolly and deliberately devise such an infernal scheme, from which human nature revolts with horror: a scheme which was calculated to involve innocent, or at least deluded men, in the most certain and dreadful ruin, whose lives he was to sacrifice to his own sordid views of advantage! No gentlemen; guilty as this man is against the life of his sovereign and the existence of the state, he neither is nor can be guilty to such a horrid extent as this defence would involve him. When you find him persevering with his associates in this conspiracy, long after he had full opportunities of discovering it; when you find him, long after the measure of iniquity was full, and the treason of those it is supposed he meant to betray, perfectly complete, not only concealing the consultation, which of itself was sufficient for that infamous purpose, but acting upon it in every particular, and devising and executing every step which could lead to serious execution, and insure its being successfully carried into effect; I leave it with you to consider if you can, like honest men with the oath of God upon you, and with justice to your country, listen to, and believe, so absurd, so incredible, and so schocking a defence.

Gentlemen, painful and severe as the task is which the law and justice of your country imposes on you, I know that if necessary, you will not shrink from performing it. In this, as in every other case, you will in presence of your God and your country, return a verdict according to the evidence, which in this case is so clear and satisfactory, that it is impossible for me to discover where you can have the smallest doubt. The reasons for being of that opinion I have fully laid before you. If on these we differ, it is your right and your duty to acquit him of the charge, and I shall be sincerely happy if you can do what, I repeat again, it has not been in my power, after the most anxious and painful reflection to bring my mind to. But the verdict is yours not mine, and for its truth and its justice you alone are answerable. Be that verdict what it may, sure I am it will be that of honest men; you will do what appears to you consistent with truth and with justice, you will do that which will satisfy your consciences in every future hour of your life.

SUMMING UP.

Lord President.—Gentlemen of the Jury;—In consequence of an indictment found against this prisoner, by the grand jury of the county of Edinburgh, upon a charge of high treason he now stands trial for his life; and the proofs on both sides being closed, it remains with you to consider, and by your verdict to declare whether that charge has been sufficiently made out against him, yea or not.

I need scarcely observe, that this is a trust of a high and important nature, which is reposed in you by the laws of your country, and that of course you must feel yourselves bound, as honest men, by every tie of duty and of conscience, to discharge it with strict fidelity by returning a verdict according to the truth of the case, and the conviction of your own minds, without regard to any other consideration whatever.

In order that you may be enabled so to do, it is necessary in the first place, that you have a distinct view of the law of treason, I mean that branch of it which is connected with the present subject; and in the next place, that you take into your most deliberate consideration, the whole amount of the evidence, and every circumstance attending it, whether it be for the prisoner or against him.

With regard to the law of treason much has been said, and with great ability, by the gentlemen at the bar, but as it could scarcely be expected that they should be at one in their

conclusions, it is my duty to lay a state of it before you, which I hope will appear to you not to be attended with much difficulty.

It must be obvious to you, that the king stands at the head of the constitution of this country. The executive government is placed entirely in his hands, for the due execution of which the ministers chosen by him are responsible.

The king also forms one branch of the legislative power, which you know is composed of three estates, king, lords, and commons; so that in more than one capacity, the king is an essential and integral part of the constitution, without which it could not for a moment exist. Indeed no part of the system can be disturbed or encroached upon, without manifest danger to the whole.

Of late, great pains have been taken to introduce among us the odious terms and distinctions of aristocrate and democrate But, gentleman, no good subject of this country is either an aristocrate or a democrate; he is both the one and the other, and a royalist too. Every British subject enjoys the protection of the king's government as defined by law, and on the other hand, he owes the duty of allegiance to the sovereign as inseparable from his condition; and being the subject not of an absolute monarchy, but of one which is limited and circumscribed by law, his rights, and his liberties, religious and civil, are completely secured.

You have heard a great deal about another distinction. Some men have affected to call themselves the Friends of the People. Friends of the People! gentlemen, if by that term is meant that those assuming it are friends of the whole, that is, friends of the king and of all ranks of men in this country without exception, then it may be allowed that they are good subjects and friends to the constitution; but why they assume to themselves exclusively, a name which ought equally to belong to every British subject, one is at a loss to see. If on the other hand, their affection be only partial, if they come with friendship in the one hand and daggers in the other; if they mean to adopt only one part of the constitution and to reject another, then may it truly be asserted that they are the bitterest enemies the people of this country ever saw.

Gentlemen, what a wretched delusion is it that has taken possession of the minds of many men in this country, who say that they want liberty, when their own proceedings are proof of the reverse, and who think their condition is to be some how made better, and their situation to be amended; by what? By the destruction of government, by the introduction of democracy, and establishing a French convention in this country, which would be the infallible consequence of their measures, were they to take effect.

But, gentlemen, without going farther upon these general topics, I now come more closely to the point in question.

It has been explained to you by the counsel at the bar, that the law of treason which we are to judge and act upon, is the English law, which was made ours in consequence of the union in 1707; and it surely cannot be a part only of that law, as thrown out by one of the gentlemen, but the whole which we have adopted; because it is now impossible that the law of treason can in any particular be one thing in England and another thing in Scotland.

The statute of Edward 3d like most other laws of an ancient date, being concise and shortly expressed, we must have recourse to the explanations which it has received by a variety of adjudged cases, and eminent authorities in the course of four centuries.

Gentlemen, to compass the death of the king, if such compassing be manifested by any overt act, is by the express terms of the statute itself, high treason; but what is or is not a sufficient overt act, within the intent of the statute, must always be open to inference and construction, according to the circumstances of each case as proved; for the statute does not say precisely what is an overt act, but it says, to compass the death of the king is treason, if accompanied by some overt act. The mere compassing or imagining the death of the king, so long as it remains an act of the mind only, cannot be reached by proof, and is not a proper subject of trial; but if it be manifested by a positive act, such as conspiring, plotting, forming plans, or providing arms, &c. these are circumstances capable of proof, and we must accordingly inquire into the nature of such circumstances, and see whether they do or do not amount to that which in the construction of the statute has been held sufficient as an overt act, to prove this branch of treason, although the design may not have been carried into full effect. The different authorities from the law books have been read to you from the bar, particularly those of lord chief justice Hale and judge Foster, upon that part of the law. They amount to this, that so much care does the law take of the personal safety of the king, that it is not confined to such attempts as are directly aimed at his life, but is extended to those whereby his person may be endangered; and therefore, says the last of these authors, "every insurrection which in judgment of law is intended against the person of the king, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him, these risings all amount to a levying war within the statute, whether attended with the pomp and circumstances of open war or no; and every conspiracy to levy war for those purposes, though not treason within the clause of levying war, is yet an overt act within the other clause of compassing the king's death, for those purposes cannot be effected by numbers and open force without manifest danger to his person." The doctrine is there

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laid down in plain and intelligible terms, which apply very closely to the present case, viz. that a conspiracy to levy war for the purpose of compelling the king to alter his government, whether there be any direct intention of killing him or not, amounts to an overt act of compassing the king's death, in the sense of the statute.

It is very true that there may be risings of the people for the purpose of obtaining redress of grievances of a certain kind, such as to obtain a repeal of particular laws, or for obtaining other ends of a public nature, which do not, in the construction of law, amount to an overt act of compassing the king's death, there being no view to the disturbance of government in general, or to bring the king's person into hazard; which risings however, if they do take place, are held as constructive treason, on account of their dangerous tendency, though a bare conspiracy or plan to effect such a rising, is not held to be an overt act under the first branch of the statute. But a conspiracy to rise in rebellious war against the king and his government, for the purpose of new modelling or altering the frame of the government, which necessarily includes the king as a part of it, or to usurp the powers of government and legislation, which of course must supersede the authority of the sovereign, at least during that period; such conspiracy, I say, must be held as an act of compassing the king's death, and is high treason, by the plain sense of the statute, and upon every construction it has ever received; for it goes virtually and necessarily to a deposing of the king, by depriving him of his royal authority and functions, which it is the king's duty to resist by force of arms, and he is even bound by his coronation oath so to do, as he must govern by the existing laws and constitution of the country; so that in such a case his life must be put into the most imminent danger, and civil war must be the consequence. If such a design is carried into execution, the country is in a state of rebellion, and the king's person and government directly invaded. A conspiracy therefore to put the country into that state, must be a treasonable conspiracy of the most dangerous kind.

In the present case, a number of overt acts are laid in the indictment, which seem to be of the nature that I have stated, they are divided into no less than eighteen different articles; but I think several of them may be compressed into one, and they will appear more simple, when they are classed under fewer heads, such as the following:—

First,—That the prisoner, along with others, conspired, consulted, and agreed to procure a meeting to be held, under the name of a Convention, for the purpose of usurping the powers of government and legislation, redressing alleged grievances, and bringing about certain changes.

Secondly,—That the prisoner and others did meet, consult, and agree, about compelling the king, by force of arms, to alter the measures of government, to introduce new laws, and to comply with certain demands.

Thirdly,—That they consulted and conspired about seizing the Castle of Edinburgh, attacking and surprising the king's forces, and taking possession of certain public offices, and certain persons in authority.

Fourthly,—That he and others, instigated and excited a number of persons to assist in their measures, employing one Fairley, to go about as an emissary, to divers parts of the country, to collect money and opinions; and that, in prosecution of the same measures, they caused pikes, spears, and other warlike instruments to be provided, to enable them, forcibly to resist the king and his government.

Gentlemen, if these acts, or any of them have been proved against the prisoner, it will then be necessary for you, to deliberate upon the effect of such proof; but first, we are to examine what evidence has been adduced for substantiating the different branches of the charge.

As to the first, viz. the project of a convention, to usurp or control the powers of government and legislation, a doubt was stated from the bar, whether it could apply to the case of the prisoner, who was no member of the convention held at Edinburgh, which was dispersed in December, 1793, without being followed by any subsequent convention. But it has been clearly proved by M'Ewan, Bonthrone, Fairley, and others, that the prisoner, within a very short time after the convention at Edinburgh, called the British Convention, was dispersed, became a very active and zealous member of a certain committee, or subcommittee of the Friends of the People, called the Committee of Ways and Means, the object of which was to raise money; and Aitcheson, who was one of the members of it, has expressly sworn, that one of the purposes, to which that money was to be applied, was "to pay the delegates to a future convention, to be held somewhere in England." The existence of different societies, both in England and Scotland, for the ostensible purposes of reform, but truly for controlling and overawing government, such as the Corresponding Society in London, the Friends of the People at Edinburgh, &c. is clearly instructed by written evidence, viz. their minutes, and letters of correspondence, which also pretty clearly point out what their ultimate objects were, and that a more general convention was in view, to consist of delegates from all the particular societies, and consequently to act by representation, and to treat, of matters of state, a privilege which belongs to no other body, except the Commons of England in parliament assembled, who, by the nature of the constitution, are represented from the boroughs and counties.—Delegates, met in a convention, for public purposes, and to consult upon public measures, while we have a king and par-

liament, cannot possibly exist, without introducing a new power into the state, paramount to that of parliament itself, and consequently adverse to every idea and principle of the constitution. The circumstance of this prisoner's being a member of the Committee of Ways and Means, and the active assistance which he gave in carrying on the business of that committee, must leave in your minds very little room to doubt of his accession to the project of a new General Convention. But if you have any doubt of his guilt, in this particular, it will be your duty to lean to the favourable side, and to lay this branch of the charge out of your view, which, however, will be of no material consequence to the prisoner, if you are of opinion, that the other overt acts are sufficiently proved against him.

It is stated, under the subsequent heads, which, (in viewing the evidence), may be taken together, that they did, in fact, meet, consult, and agree about compelling the king, by force of arms, to alter the measures of government, to introduce new laws, and to comply with certain demands, with a view to which, they also consulted and treated about the necessary means of carrying their plan into execution; such as seizing the Castle of Edinburgh, the public offices, &c.

The proof of these facts arises, chiefly from the evidence of some of those very men who assisted in the deliberations. Aitcheson is the first witness upon this part of the charge. He was a little sparing of his words, and he seems to have proceeded with caution. He was told by the prisoner, "that something of importance would soon be upon the carpet;" and he also heard, out of doors, "that some secret business was to be before the committee, for which reason, as he acted upon public grounds, he did not choose to attend their meetings any longer."

The next witness, and a very material one, is M'Ewan, who was himself a member of the Committee of Ways and Means, and had occasion to be at the meetings of that committee, where the prisoner attended. He states, that at one of these meetings, consisting of Stock, Downie, Bonthrone, the witness himself, and the prisoner at the bar, the prisoner took a paper out of his pocket, which he read; that it contained a plan for seizing upon the lord provost of Edinburgh, and the judges; that in order to draw the soldiers out of the Castle, a fire was to be lighted at the Excise-office; that certain persons were to be stationed at the Weigh-house, and other places, and the soldiers were to be surrounded by them; that they were to seize on the Excise-office, and banks, and to demand money of the bankers. As to the design of seizing the Castle, this witness is silent, but in speaking of the attack to be made upon the soldiers, when they were drawn out, he says, he was told what was to be the mode of doing it, which he describes; and, that the prisoner, after having read this paper, made some corrections upon it with his pen, which seems to denote, that he himself was the author of it, or that he had a right to use that liberty with it; and he then put it up in a press, in the room where the company were. The witness goes on to state, that, on another night, in the same house, he and Downie being present, the prisoner read another paper, containing a notice, in the form of proclamation (one of the highest exercises of sovereign authority), which was to be made "for the purpose of intimating to the farmers, to bring all their grain to market, and for the gentlemen residing in the country, not to leave their houses, or at least not to go more than the distance of two or three miles from home;" and he adds, that there was the form of an address to the king, "to dismiss his ministers, and put an end to the war with France, for, that if he did not, he must abide the consequences, or that worse consequences would ensue."

He farther states, that the prisoner conducted him to the shop of Orrock, the smith, with whom he had a conversation about making pikes; that Orrock drew a model upon the table, and the prisoner desired him to be busy about them, for that he was to send four thousand of them to Perth, besides what were to be distributed at Edinburgh. That the witness was in Orrock's shop, when lord Swinton's servant came in, and observing one of the pikes, asked what it was, and Orrock said it was for a gentleman's gate.

This extraordinary narrative was given by the witness with great clearness and precision, and in such a manner as must have carried conviction to your minds, of the truth and candour with which he spoke, and, at the same time, of the alarm which he was under, he himself having expressed his dissent to any measure by which the blood of his countrymen might be shed.

I cannot bestow the same encomium upon the next witness, who spoke to the same facts, viz. William Bonthrone, who, after a good deal of hesitation, and with the utmost difficulty, acknowledged that he heard the paper read by the prisoner, and in substance concurred with the preceding witness as to the tenor of it, with this addition, that he believed it contained a plan for seizing upon the Castle. This witness, in the same way with M'Ewan, appears to have been very much alarmed indeed; he says his confusion was such, that it deprived him of the power of recollection, and he seems desirous that this should account for the manner in which he gave his evidence. That the witness was averse to the plan, is evident from the circumstance of the advertisement which he drew out and signed, though, for reasons given by him, he did not actually publish it in the newspapers.

The next is Fairley, whose evidence is extremely material; for you will recollect, that he was employed as an ambassador, to go to

different parts of the country, upon the business of the Committee of Ways and Means, with written instructions from them, which he got from the prisoner. He, with no small reluctance and hesitation, gave an account of this mission, of the places to which he went, and some of the conferences which he had with the persons to whom he was directed, particularly at Stirling. That his instructions bore something about a *grand* plan, "which might be what the prisoner had previously informed him of," meaning the plan already mentioned, of seizing the public offices, &c. which he said Watt told him might be accomplished without bloodshed, "as it would be enough to speak to the soldiers, who would be as glad of freedom as the people were." He refers also to the report which he made to the Committee of Ways and Means, a paper of a very curious tenor, some parts of which were read to you. His evidence, so far as regards what passed at Stirling, is corroborated by that of Forrest, the surgeon, whose difficulty in speaking out was no less remarkable.

Gentlemen, this is a concurrence of several witnesses, to the very material circumstances of that plan or project, which was read and proposed by the prisoner Watt. There is one thing in Bonthrone's evidence which struck me at first, as tending to create a doubt, whether the paper read by the prisoner contained any serious proposition to the effect mentioned in it, the witness himself affecting to consider it as mere phrenzy, or as no more than a chimerical suggestion of what was possible to be done in certain circumstances.

But I am afraid there are other parts of the evidence which leave little room to doubt of the seriousness of the plan. M'Ewan and Fairley speak of it as a plan formed, of doing those things which the writing specified; and the procuring of arms for the express purpose of making some such hostile attempt, which arms were bespoke by the prisoner himself in person, as sworn to by Orrock and others, is a circumstance which seems to be conclusive upon this head. The whole, I am afraid, hangs together; the parole and written proofs all go to one point against the prisoner, and those with whom he associated; that they were employed in carrying on certain measures, unquestionably hostile to the king and government, and calculated for nothing less than, by forcible means, to overset the government of this country. The providing those dangerous weapons which lie on your table, the mystery and disguise which appear in some of their minutes, and the blanks in Fairley's journal, are so many circumstances of real evidence, which speak a language still more forcible than the direct testimony of witnesses.

With regard to the evidence brought on the part of the prisoner, founded on his correspondence with the lord advocate, I confess it did not appear to me that it was very judicious in him to state that defence, at least as far as I could understand the result of it; for though it appears, that there was at a certain period such a correspondence, it is equally clear that all communication ceased when the lord advocate either had become suspicious of the truth of his information, or did not choose to comply with his demands; after which we find the prisoner going, with great activity and zeal, into the most destructive and hostile plans. Whether his conduct in this particular was actuated by resentment, or by what other motive, it is not worth while to inquire.

Such, gentlemen, being the amount of the evidence, you will weigh all the circumstances and all the observations which have come either from the Court or from the bar, as well as those which occur to yourselves upon the various matters which have been proved before you. If it appears to you that the prisoner, and those with whom he associated, have not entered into any undue combination, for effectuating those illegal and desperate purposes which are specified in the indictment, or any of them, it will be your duty to find a verdict in his favour.

But if, on the other hand, you think there is sufficient evidence of his having been accessary to, and an active person in, forming a most dangerous and destructive plan of raising insurrection in the country, seizing upon the government by force of arms, compelling an alteration of measures, in short, conspiring to overturn the constitution, and to involve us in ruin, misery, and bloodshed, I need not tell you what your duty is as honest men, and that you are bound, by the solemn oath which you have taken, to return a verdict agreeable to the truth.

If the case be in your opinion doubtful in point of evidence, you will naturally be inclined to the merciful side; but if it be not doubtful, your own sense of duty will dictate to you the verdict you ought to pronounce.

The jury then withdrew for about ten minutes, and brought in their verdict—Guilty.

See the proceedings on Mr. Hamilton's motion in arrest of judgment, at the end of Downie's trial, in the next volume.

To the original edition of this trial was annexed, by way of appendix, Watt's Declaration and Confession. It was likewise separately published *by Authority* with the following title:

The DECLARATION and CONFESSION of ROBERT WATT, written, subscribed, and delivered by himself, the evening before

his execution, for High Treason at Edinburgh; October 15, 1794, attested by the Rev. Dr. Baird, principal of the university of Edinburgh; and the Rev. T. S. Jones, one of the ministers of Lady Glenorchie's chapel.

The following Declaration, was put up under a sealed cover, addressed on the out side to James Clerk, esq. sheriff depute, Geo. square.—In the inside of the cover was written the following letter by Robert Watt to him:

Sir:—The inclosed papers, with another parcel, containing sundry miscellaneous letters and papers, I commit to you; requesting they may be transmitted to principal Baird, and the rev. Mr. Jones, to do with them as they may find proper. The little emoluments which may arise from them, I am persuaded they will give to Binning who attended me.

My watch and my clothes, and any little effects I may leave behind me, I request them to be given to Mr. James Stalker, at Mr. Wilson's, baker in Cross-causeway, to whom I owe money *per* bill; and to whom I gave a disposition to these, and other effects, before my condemnation. I have the honour to be, sir, your obedient humble servant,

(Signed) ROBERT WATT.

Edinburgh Castle Oct. 14, 1794.

We, who are referred to in the above letter and who subscribe this note, do hereby attest, that the contents of the following Declaration are transcribed *verbatim* from the manuscript of Robert Watt, transmitted to us by the sheriff.

GEORGE BAIRD.
T. S. JONES.

DECLARATION, &c.

As the best service I can now do to religion, which I have injured by the unhappy conduct which has brought me to my present unfortunate situation,—to my christian acquaintances, whom I particularly esteem, and by whose company and conversation I have been both improved and comforted;—and to my country, for which I have had more than ordinary attachment, I shall give a general, but concise history of the most material part of my life, and disclose fully the unfortunate circumstances that have been the cause of terminating my life in such a melancholy manner, in the middle of my days.

Having but four days before I am absorbed in eternity, I hope that what follows will be received as the truth.—In the view of such an awful prospect, it cannot be supposed I can have any interest whatever to conceal it.

No sooner is the soul separated from the body, than she is disconnected with the pursuits of mortals, and enters an hitherto unknown scene,—and her powers of perception and communication are then enlarged, in proportion to the sublimity and grandeur of the objects exhibited to her view. With astonishment and prying curiosity, she travels over the vast expanse of the heavenly Jerusalem, collecting from the most ancient and intelligent of its inhabitants, every information they can communicate of the mysteries of Providence and Redemption, while she seems, as her knowledge increases, to rise in her accents of praise.

I was influenced by religion when very young. A reflective discovery of the goodness of God, in his interposition when in very imminent dangers, and of my ingratitude (I exceeded my companions in youthful follies, but could never bear swearing) first led me to cry for mercy. My convictions were exceedingly strong; so that I would in the space of two hours be three or four times at prayer, drowned in penitential tears. I have always found, that my penitential joy was in proportion to my contrition for sin. For a long space of time, I was not a day (if I remember right) without assurance of a saving interest in Christ; and, at times, my feelings and views were more like an heavenly, than an earthly inhabitant. On such occasions, I had inexpressible discoveries of the infinitude and holiness of God, and of my own vileness. I wondered, admired, adored, lamented, and rejoiced at one and the same time.

No sooner did my convictions take place, than I was, as it were, compelled to allot some particular hours every day to reading the scriptures, meditation, self-examination, and prayer. These hours I found to be the life of my soul. I learned from experience, that faith must be the gift of God. That I could as soon take up my personal residence in the sun, as truly believe in Christ, or fix my heart on him in the exercise of faith. This unbelief and treachery of heart drew tears of sorrow from my eyes.

Though my pleasure in religion was great, my grief from satanical suggestions and a depraved nature was also so. I was strongly tempted to despair and suicide; but he who keepeth Israel preserved me amidst these storms.

Religion did no sooner operate on my mind, than I hated the ways of sin, and the company of the profane; and sought, according to my then knowledge, the company of the wise and good. Though my pleasure was particularly in devotional exercises, and in such company; yet I spent a great part of my time, in boyish pursuits and pleasures, with my school-companions; but in these, my devotional frame of mind never left me, and how soon I came home, I retired by myself, and wept over my vanity of conduct.

Even in school, the thought of my enci-

fying the Lord of glory by sin, often bathed my eyes in tears, and impelled me to pray with my head leaning on a table.—The sense of his love, and the injury done him produced in me a zeal for the salvation of others—to such a degree, that I established the worship of God in some families I lodged with, who never had it before.—I was often surprised to see the same effects not produced on the minds of others in reading the scriptures, &c. as on myself—But this arose from my ignorance of the sovereignty of God.

As I advanced in knowledge, my high enjoyments were the less frequent; and the instability of my mind in exercises of devotion became more and more perceptible. These soul exercises, less or more have continued with me amidst grievous provocations, and sore backslidings.

I shall now proceed to state the causes of my backslidings, so far as I can trace them.

A reserved disposition, founded on pride, seems to have been my constitutional sin—In my earliest youth it discovered itself, by taking pleasure in vexing my guardians when they crossed my inclination. I was so much under the influence of this base passion, that more than once I gave them the greatest alarm and vexation of mind, by concealing myself, and previously saying that I would put an end to my life by personal violence; and enduring sore personal chastisement without disclosing any secret entrusted to me.

Sometime after I knew the grace of God, this passion disappeared; yet it was not destroyed—but manifested itself in opposition to the inclination of my friends to send me abroad.

My friends proposed to send me either to the East or West Indies, but refusing to comply, on the ground of a weak constitution; but the true motive with myself was the fear of not enjoying the means of grace—After which they proposed to send me to London; but not executing this proposal in the time I wished (though their delay undoubtedly proceeded from the best of motives), I resolved to act independently of them. Accordingly, I came to Edinburgh in the year 1786, where I remained for a considerable time without their knowledge, and got into business without their assistance.—So far was my vanity gratified.

Here I digress and beg leave to observe, though perhaps it may be unnecessary, that parents or guardians should be particularly careful to study the ruling passions of young persons under their charge; and, should they be such as tend to hurt their morals or blind their best judgment, to correct them by timely, proper, and wholesome instruction. But above all things, they should study to learn the inclination of their mind as to business, and to put them early to it. Because this will give a full scope to the young mind in the pursuit of fortune, in a way consistent with his profession; whereas when not put early to business, they are apt to seek after her by indirect methods.

After I began business on my own account, I adopted every method that my ingenuity could suggest, to arrive at some eminence in society.

For one, I studied the dispositions and ruling passions of individuals; and, not having the gift of speech equal with others, I spoke but little when in company, lest I should either speak improperly, or hurt the feelings of another by interruption.

From what I have said, the reader will easily discern the following passions to have borne rule in my conduct, viz. pride and ambition.

Pride is the fruitful mother of all the other irregular passions—It was the origin of rebellion in heaven, and the thunderbolt that hurried Satan into the bottomless pit; and stript innocent Adam of his original purity. Ever since, it more or less holds a place in every human breast.

It is capable of assuming various forms—At times it assumes the garb of humility, rigidity, and moderation. But none can trace its various evolutions so well, or discover its malignity, as the sincere christian. It may possibly keep him company in all his devotional exercises; and, even under the specious pretext of humility, may be apt to drive him from God, as judging himself unworthy of eternal life.

But its influence over me was remarkable—I could not brook the idea to be indebted to any person for advice, even in difficult and doubtful cases. I therefore very seldom consulted any person, though many consulted me. Had I acted the prudent part, I should have consulted intelligent and disinterested men, previously chosen.—The friendship and esteem of some such I have had the honour to enjoy.

Ambition—Though this passion be the offspring of pride, it is to be no less watched against than its source. It blinds our best judgment by the appearance of utility, and is apt to drive to acts of injustice in the pursuit of the wished-for object; while it is but a distrusting of, and a contending against Divine Providence. Influenced by this base passion, under the semblance of utility, I was induced to carry on a secret correspondence with Mr. Dundas and the lord advocate.

This conduct, I confess, was altogether inconsistent with the spirit and design of Christianity, which requires the most unbounded simplicity, integrity, and love to my fellow-creatures.

My first connexion with the Friends of the People was in the year 1791 or 1792. I several times attended the committee which met in Mather's Tavern; but would never subscribe my name, though repeatedly required to do it. This was the æra of my correspondence with Mr. Dundas. Two reasons induced me to this unhappy conduct. One, a

love of the peace of society—I apprehended, that if they were permitted to continue their meetings, the public tranquillity would be interrupted. This opinion was founded on my ignorance of the many abuses in the administrative—the offspring of corruption in the legislative branch of government. For when the legislative becomes more corrupted than the executive, there is an end of true liberty. —And that the people had a right to meet and deliberate on, and to obtain a redress of grievances.—The other reason, to obtain Mr. Dundas's favour, that I might the sooner arrive at that station in society to which my views were directed. Some may imagine that I had personal hatred at some of the Friends of the People, but this was by no means the case.

Mr. Dundas wished me to correspond with the lord advocate, and accordingly recommended me to him. My correspondence with him continued to August or September 1793, when it was discontinued.

My mind being then changed in favour of reform, I entered into the committees of Union and Ways and Means,* in order to cooperate with them to the obtaining of a reform. Naturally ambitious and enterprising, I was soon the leader of these committees. By my advice the Committee of Ways and Means, or Secret Committee, was formed; and its regulations drawn up by me. These regulations contained also directions to the Primary Societies, and to the Committee of Union. The Circular Letter, though composed by Mr. Stock, was advised by me. And though the Address to the Fencibles was not moved by me, I heartily approved of it. All these papers I got printed; and the whole impression was dispersed, but the Address to the Fencibles, of which I knew nothing, after printed.

My plans, I doubt not, would, when ripe for execution, be effectual. Bloodshed was what I abhorred from the bottom of my soul; they therefore guarded against that evil as much as may be. I shall here narrate them. — Other persons, as Archibald Wright, weaver, in Edinburgh, and ——— Craig, Perth, besides John Fairley, were sent at different times through the country, to sound the public mind, and to give instructions. The intelligence brought me, from time to time, by these persons, from every quarter of the kingdom, was more and more favourable. All their instructions were delivered by myself—but such as I knew I could fully confide in, their instructions went farther than those of others. Indeed, at the time I was apprehended, there were but very few places that information was not received from; and there remained almost nothing to do, for the execution of the whole, but a visit to England and Ireland, by intelligent and confidential persons.

The first movement was intended to be made in Edinburgh, London, and Dublin; while every town throughout the kingdoms were in readiness to act, according to the plan, on the very first notice, which was to be given by couriers dispatched by express.

The nature of the plan was this:—A body of men, to the number of four or five thousand, were to be assembled in a place to be fixed on. These were to be armed with pikes, guns, grenades—to be properly divided, with proper leaders. In regard to Edinburgh, these were to be placed at the Gælic chapel, head of the West Bow, Tolbooth, or head of the High-street,—that when the Castle soldiers came out, they might be surrounded. In order to prevent bloodshed, means were to be used to gain as many of the soldiers as possible over to their side. The regiment was to be enticed out by companies. But, previous to this, the magistrates, lords of justiciary, commander in chief, and many others in town to be selected, were to be apprehended; but to be treated, in every respect, becoming their station in life, and detained till the mind of the ensuing convention, or rather parliament, was known. There was no intention whatever to put any to death; but if found guilty of oppression and injustice to the patriots, to share a similar fate with them, viz. transportation.

The manner in which the soldiers were to be induced to leave the Castle, was by means of a letter, either signed by the lord provost or commander in chief, previously in custody, ordering the commandant to send a company, without any ammunition, to a fire that was to be kindled in St. Andrew's-square, under the pretence of its being a house on fire; and the said company to be secured and disarmed in the mean time. The most of the remainder to be drawn out in the same manner, by means of fires kindled in succession in other quarters of the city.

But in case they either could not be drawn out of the Castle, or had obtained information of what was a-doing, they were to be compelled to surrender, by being deprived of victuals;—the incarceration of the commander in chief, and the influence of party among themselves favouring the plan.

The public offices and the banks were to be secured, by placing proper persons as sentinels over them, till the proprietors and managers appeared next morning. The same were to be consulted with by qualified persons, to be previously chosen. The property of such persons, either residing in town or country, deemed inimical to liberty, in the hands of bankers, was to be sealed up, but what was necessary for their maintenance, till their fate was known.

The post-office was to be taken possession of; as thereby all intercourse would be cut off between such as were hostile to the patriots, while the channel of communication was left open for them.

* Of the Friends of the People.—*Orig. Ed.*

After these things were effected in Edinburgh, London, and Dublin, in one and the same night; and which was expected to be accomplished about six or seven o'clock in the morning,—couriers were immediately to be dispatched throughout the whole nation, to the leaders in other parts; while troops were to be marched from places to be fixed on, that could spare them to the assistance of such as would be deemed necessary. No sooner was the plan executed in the three metropolisses, than proclamations, previously prepared, were to be issued to the landholders, and officers under government, as did not cordially unite with the patriots in their views and designs, not to go above three miles beyond their dwelling-places, under pain of death;—to farmers, not to conceal or export any grain;—to ship-masters, not to carry any person coast-ways, without giving intimation of the same; place come from, and where going to, of such person or persons, within a reasonable time after such intimation was given, to the nearest justice of peace, that the same might be called to an examination, under a similar penalty;—to such persons as were authorized to levy men, to deliver up their commissions and men to persons to be nominated, under the same penalty.

There was preparing an Address to be made to the King at the same time, consisting of a long catalogue of abuses, both in the legislative and executive branches of government; and requesting of him the dismissal of his present servants, and a dissolution of parliament, the same to be replaced by men in whom the people could confide.

With regard to the pikes, I got them made both for sale and distribution. I do not at present recollect what instructions I might have given at the making of them. Whatever these instructions were, I am certain that none I had were ever distributed.*

There was no person concerned in these things but the Com. of W. and M.—Because I was morally certain, from the aspect of affairs, that how soon the operations were commenced, persons in the various ranks of society would carry it on.—I have therefore no new discoveries to make.

I can judge of my intentions from my feelings,—my views were the good of society; and not robbery or murder. I will not say but my own interest was blended in these views; for who is he, that if he serves society, but will naturally expect a reward? But Divine Providence has been pleased to permit me to be brought into circumstances of misery and woe—I hope they have been the best reward that could be conferred on me. I however patiently, and I hope thankfully, accept of these as coming from God, not only as the Sovereign Disposer of all events, but as my merciful Redeemer.

In reflection, I see that although my intentions were good, and probable evils endeavoured to be guarded against, yet circumstances might have proved such, as would have caused me to repent my having gone so far, although my person were safe, which I sincerely do this day.

Though the part I acted proceeded from the best of motives; yet, on reflection, I perceive that I erred in taking such an active part, without maturely weighing the probable consequences. Bloodshed and rapine might have ensued. This would have involved me in guilt; being somewhat accessory to them, though not intentionally so.

The duty of all sincere Christians is, "to lead quiet and peacable lives in all godliness and honesty, giving honour to whom honour is due, and fear to whom fear." To leave the reformation of abuses in the state to those who mind only earthly things, except when called to assist in a legal manner. At the throne of grace they may be of more real utility, than either in the cabinet or field of battle.

Had my life been prolonged, I think this would have been my mode of conduct. And I bless God for timely preventing me going the perhaps awful length my ambitious and enterprising mind might have induced me.

I have given no private offence that I know of. Indeed, my sympathising mind, though compounded of pride and ambition, would soon relent. I may truly say, if I know my own deceitful heart, that sympathy to the unfortunate was one cause of my adopting the part that has brought me to my present fate. Reflection on the hardships of others has often brought tears of sympathy from my eyes. Nor have I borrowed money, nor purchased goods, but with the most upright intentions.—For the satisfaction of my creditors, I will observe, that I had views of being able to pay what I had either borrowed or purchased, had I lived, altogether disconnected with the matter that has brought me to my present unfortunate situation; but in this situation it would be improper to mention what these views were.

Though I have always kept up the worship of God, at stated times both in the closet and family, and had honest intentions towards my creditors; yet I am convinced, that my departures from God have been very great; and that, in the glass of his holy law, they are innumerable and highly aggravated. And especially the crime for which I am about to suffer, as viewed in its probable consequences. I humbly hope, that the spirit of God has given me a saving discovery of my sins; and that, in the spirit of genuine contrition, I am led to the precious blood of sprinkling.

In the foregoing narrative, if any article

* The pikes were found in my house, when the sheriff's officers were in search of the goods of a bankrupt in Musselburgh, sent to my house, about an eight days before, under the pretence of their being to be forwarded to Glasgow. *Orig. Ed.*

appears imperfect or obscure, I hope the imperfection or obscurity will be ascribed to the urgent pressure of the occasion on which this paper is written. It is a first copy; and alas! there is not now time to revise or correct.—Of the minutes of life that yet remain to me, even the writing of this sentence has consumed one. But you who now read or hear of this account, remember as you read, that the period is coming when death shall be as near to you as it is to me; and, be assured, you will find that a period when you will shrink with horror from the idea of duplicity or deception. With candour then consider this solemn declaration of a dying man. Nor let prejudices, which appearances have produced against me, lead you to suppose, that, on the brink of eternity, with the throne of judgment in my view, I dare to approach the Omnipotent with a lie in my right hand.

Those who, in an official character, began and managed my prosecution, I freely forgive.

Forgive me, my fellow Christians, for the reproach thrown by my conduct on religion.

My prayer to God is, that he may inspire all the people with a spirit of subordination and loyalty: and teach them to lead, under the powers that be, quiet and peaceable lives in godliness and honesty.

O God! soon shall my body be given to the dust, and my soul will ascend to thee. Thou knowest my sincerity in the narrative I have given; thou seest my sorrow for all my sins. Hear me graciously—And, for the sake of the Lord Jesus Christ, receive my soul to everlasting glory.—Amen.

This is truth, and the whole truth, as far as I recollect, I declare as a dying man.

(Signed) ROBERT WATT.

Tuesday Evening, Oct. 14th, about 8 o'clock at night, 1794.

In regard of sending pikes to Perth, to the best of my recollection, I talked with Craig about them, and that he told me they should be sent secretly; but I cannot say to what number, nor to whom.

Note.—Although Watt, soon after his condemnation, promised the clergyman who visited him, to write a confession of his crimes, he delayed the commencement of it till within eight or nine days of his death. On the Wednesday before that event, he had written one sheet; this, it is supposed, he destroyed, as it was not among the papers he left behind him; hitherto he appeared easy in his mind; but on the Friday, Saturday and Lord's day, much agitated. On this last day he again began to write, but advanced no further than the account he has given of his childhood, &c. By what he said afterwards, it is plain, his hesitation arose from the vain hope of a reprieve. On Monday morning he again appeared calm, and in good spirits; and said he had at last determined to declare all he knew, and employed the morning of that day in writing what is now given to the public.—In the evening, the order for his execution was officially intimated to him.—On Tuesday he continued writing; and in the evening, between seven and eight o'clock, finished and subscribed the paper now published, and put it under a cover to the sheriff.—On Wednesday, 15th October, he was executed.—The paper was sealed up in Watt's presence, together with another parcel, containing the letters he received whilst in prison, and other papers of no importance. Both parcels were by Watt himself addressed to the sheriff, and delivered to the commanding officer of the Castle, who sent them to the sheriff on the Tuesday evening agreeable to Watt's own particular request. —*Orig. Edit.*

ADDENDA

TO VOLUME XXIII.

ADDENDA TO MUIR'S CASE.

To the word certification, *p. 286, l. 15 from bottom should be affixed the following note.*

"The certification," says professor Hume, Comm. Tr. for Cr. Vol. 2, p. 367, "of old, in case of the convict's return to Scotland before the expiration of his term, was invariably death. Afterwards, other penalties came to be occasionally applied, and sometimes that of perpetual imprisonment; as in the sentence of Isobel Nicolson, August 6th 1711, and of Campbell of Burnbank, March 31st, 1721.

"The words in Nicolson's case are: 'she 'shall be condemned to *perpetual imprison-* '*ment*, and to be scourged by the hand of the 'common hangman, the first Wednesday of 'July yearly, being a lawful day, and failzie- 'ing thereof the first lawful day thereafter.'

"And these are the words in Campbell's case: 'And from thence to be transported 'from sheriff to sheriff, till he be brought to 'Edinburgh, and there to be committed pri- 'soner within the Tolbooth thereof, therein 'to remain during life, whilk is pronounced 'for doom.'

"It was not, however, till towards the middle of the present [18th] century, that the capital certification came to be entirely laid aside, for that of conveyance to the gaol from which the convict was carried abroad, scourging on the next market day after commitment thereto, and on the first market day of every succeeding month, until an opportunity should offer of retransporting. But now, in virtue of the stat. 25, George 3d. c. 46, the certification is again made capital, and this not only as of old, in case of returning to Scotland after transportation, but more generally, 'if the offender who shall be so ordered by such court as aforesaid, to be transported beyond the seas, &c. &c. shall be afterwards at large, within any part of the kingdom of Great Britain or Ireland, without some lawful cause;' so that he is liable to suffer death if he even break gaol after his sentence, to avoid transportation, and be found at large within these realms, or any of them. It seems, however, to be doubtful, by the words of the act, whether this high denunciation does not apply to those offenders only, who have had judgment of transportation in pursuance of trial and conviction of a crime, or who have entered into a contract to transport themselves, and not to such who are ordered to be transported on their own petition, without trial. The same statute in effect empowers the lords of justiciary to decern for transportation generally, to such place as his majesty, with advice of his privy council, shall think fit; as also to adjudge the services of the convict, to such person as shall contract for the due performance of such transportation: and, last of all, it equitably orders that the time of the convict's confinement in gaol, under such sentence, shall be reckoned in discharge of his term of exile.

"To this of transportation to parts abroad, I naturally subjoin the punishment, though certainly far from being next in degree, of simple banishment forth of Scotland, a sort of sentence of still greater antiquity in our practice than the other, and which naturally took its rise in our state of hostility to England, and has been since continued, to say the truth, in no very friendly or neighbourly way, after the union of the two crowns, and even that of the two kingdoms into one realm. Happily they have not yet thought in England, of taking that ample and severe revenge on us which they have in their power, if they were disposed to retaliation."

There is an appearance of incongruity between that part of the preceding extract in which perpetual imprisonment is mentioned, and the following passage, which occurs at p. 377 of the same volume.

"Another of our ordinary punishments, is that of imprisonment or loss of liberty; which is not properly a punishment in the person. It is applied chiefly to the inferior offences; yet, when protracted to a long period of time, it cannot justly be accounted a slight reproof as well on account of the depression of spirits and loss of comfort which attend a tedious confinement, as on account of the probable injury in point of health, and the loss to the indigent offender, of the means of subsistence to his family, not to mention the prejudice to his fame, not soon to be recovered. Accordingly, if I mistake not, our legislature have not in any instance thought it fit to prolong this state of durance beyond the space of one year. Neither can I find that our judges have ever been in the use of dooming to imprisonment for those long terms of four and five years, of which instances have sometimes happened in the practice of our neighbouring kingdom; but in any case where there was need of severity, have rather thought it better

to eke out the sentence with the addition of some corporal chastisement, or other penalty suitable to the offence. Indeed, the examples have not been many, of sentence of imprisonment for more than twelve months: and as far as I have observed, except in the single case of Mary Nicol, (Feb. 19th 1705) who had been convicted of something not very remote from child-murder, and was ordered to be scourged, and confined for three years in the house of correction, there is no record of the time of durance being extended to more than two. It is true, that as a certification in case of return from banishment or transportation, mention is made of imprisonment for a longer time, nay for all the days even of the prisoner's life. But these excessive, and I think exceptionable denunciations, seem to have been issued *in terrorem*, rather than with any serious purpose of carrying them into effect. not to mention, that this sort of provisional order is very different from an absolute and irrevocable sentence. It is also true, that in one instance, imprisonment for life is a lawful sentence, namely for misprision of treason, but this we have only received as an article of the English system of treason law, now made ours by statute."

Mr. Hume, in the same part of his work, makes mention of one case, that of Alexander Stewart and Donald M'Donald, in which the punishment of death was commuted to that of perpetual servitude, during which it appears that each of the convicts wore round his neck a metal collar, with an inscription denoting his fate, See. 2 Comment. 378, and Appendix No. 3.

To the note p. 145 *should be added.*

" Lord Royston mentions in his notes, that in the case of the Glasgow rioters, in September and October 1725, a quaker was admitted a witness upon his affirmation, by mistake. He also mentions, in another passage, that in the trial of Captain Porteous" [See it in this Collection, Vol. xvii. p. 923.] " one Christie, a quaker, was refused to be received a witness for the panel; ad. p. 265, and p. 250. By mistake, a quaker was admitted on his affirmation, in the trial of Mealmaker in 1797." Hume's Commentaries, Trial for Crimes, chap. 13, Vol. 2, p. 187, *in not.*

See Atcheson *v.* Everitt, B. R. 16 G. 3, Cowp. 382.

ADDENDUM TO MARGAROT'S CASE.

To the name Margarot *p.* 710, *l.* 18, *from bottom should be affixed the following note.*

According to Mr. Burnett [Treatise on various branches of the Criminal Law of Scotland, chap. 13, p. 250.] " Margarot chose to state his own defence, without the aid of counsel, and of course the tenor of his objections was equally absurd and intemperate. His whole conduct indeed and demeanour during his trial was a *paradeful triumph over justice.*"—See in Vol. 20, p. 779 of this Collection, Thurlow's Speech against Horne.

ADDENDA TO GERRALD'S CASE.

To the note p. 902, *should be added.*

" Our judges were formerly in the use of weighing all those circumstances in the situation of an assizer, which might tend in any wise to bias his voice, or beget an undue favour to the prosecutor's cause: as that he was the prosecutor's tenant, especially if he were removeable at the pleasure of his landlord; or that he was servant or attendant in any shape, to any of the prosecutor's near relations. In later times, I find no mention made of any plea of this complexion; unless it be in the trial of Joseph Gerrald, who being prosecuted at the instance of his majesty's advocate, for sedition, absurdly objected to the naming of William Rankine, his majesty's tailor, for one of his assize." Hume's Commentaries on the Law of Scotland, respecting Trial for Crimes; Vol. 2, pp. 96, 97.

Note to the word nobility *in* Gerrald's *case, p.* 986, *l.* 6 *from bottom.*

Boethius appears to have been the first relater of this story. Blackstone (Comm. B. 2, c. 6, Vol. 2. p. 83) says (upon the authority of the Regiam Majestatem, b. 4, c. 31, and Selden's Titles of Honour, 2, 1, 47), that the custom for the lord of the fee to have a right of concubinage with his tenant's wife on her wedding night, certainly prevailed in Scotland under the name of merchets or marcheta), till abolished by Malcolm 3d, though as he states in the same sentence he could not learn that ever such custom prevailed in England.

The account given of this in the Regiam Majestatem is as follows:—

" Liber Quartus, cap. 31.—De Marcheta Mulierum.

" Sciendum est, quod secundum assisam terræ Scotiæ, quæcunque mulier fuerit, sive nobilis, sive serva, sive mercenaria, marcheta sua erit una juvenca, vel 3 solidi, et rectum servientis 3 denarii.

" 2. Et si filia liberi sit, et non domini villæ marcheta sua erit una vacca, vel sex solidi, et rectum servientis sex denarii.

‡

"3. Item marcheta filiæ Thani, vel Ogetharii," (this word is rendered Ochiern, and Skene and Du Cange say 'æquiparatur Thano') "2 vaccæ vel 12 solidi, et rectum servientis 12 denarii.

"4. Item marcheta filiæ Comitis est Reginæ, duodecim vaccæ."

"Annotatio" (by Skene).

"*March* equum significat priscâ Scotorum linguâ, ut dixi de verbor. significatione. Hinc deducta metaphora ab equitando, Marcheta mulieris, dicitur Virginalis pudicitiæ prima violatio et delibatio, quæ ab Eveno Rege, Dominis Capitalibus (to the King and other Overlordis, as some writis) fuit impiè permissa, de omnibus novis nuptis primâ nuptiarum nocte. Sed piè a Malcolmo 3, sublata fuit: et in hoc capite, certo vaccarum numero, et quasi pretio redimitur."

Lord Hailes has written a learned dissertation [See it in the Appendix, No. 1, to the 1st Vol. of his Annals] for the purpose of proving that this privilege never existed in Scotland, and he argues with much ingenuity that the opinions which had been entertained of its existence in several other parts of Europe, were also erroneous, and in his Annals under the year 1093, he speaks of Evenus as an imaginary king. He is of opinion that the word signified the fine paid to the lord by the villain a Sokman, when his daughter was married or debauched; and with him agrees Dr. Jamieson; See his Dictionary, voc. Marchet.

Du Cange appears to have been thoroughly persuaded of the existence of this privilege, and forces words from their natural signification, in order to give strength to his opinion.

Blount, in his Tenures, under Worthynbury interprets the Amobragium in the same manner. Under Thurgarton and Horsepoll, he mentions that every naif or the villain, that took a husband, or committed fornication, paid merchet for redemption of her blood, five-shillings and four-pence, and the daughter of a cottager paid but half a merchet. And under Fiskerton and Moreton, he speaks of a like custom. In Berk-holt, indeed, he speaks of the Mercheta Mulierum as the first night's lodging with the bride, which the lord anciently claimed in some manours: but under Worthynbury he says that he believes there never was any European nation (in the periods this custom is pretended to exist) so barbarous as to admit it.

If this custom ever existed, it might cast some doubt on the paternity of the first-born children of marriages subjected to its operation: and in contemplation of such a consequence, it has been alleged that from this custom originated the anomalous, though ancient descent of tenements holden in Borough English, to which tenements upon the death of the father, the youngest son succeeds, in preference not merely to the first-born child, but to all the elder sons of a marriage; a fanciful inference illogically deduced from a gratuitous, and I believe, a groundless assumption.

Whitaker [History of Manchester, book 1, ch. 8, sec. 3, p. 265, as cited in a note to Blount, edition of 1784] says that the Mercheta is apparently nothing more than the Merch-ed of Howel Dha, the daughterhood, or the fine for the marriage of a daughter; upon which Lord Hailes observes he cannot imagine that in the Welsh language *ed* implies a fine for a marriage.

Mr. Daines Barrington [Observations on stat. 1 Rich. 2.] tells us that in some manours the lord had "jus luxandæ coxæ sponsarum vassallorum," but he cites no authority for it, and I recollect not to have met with the phrase elsewhere.

Mr. Chalmers [Caledonia, Book 3 ch. 9, Vol. 1, p. 449] defines the 'merchet of women' to be a duty paid to the superior by the tenants or vileyns, on the marriage of their daughters. With Davies and Owen he derives the term *Mercheta* from *Merch* (Brit.) a woman, or daughter: and he notices that to so late a period as the reign of our James the 1st, the existence of this duty may be traced in proper Scotland, and also in the country of the Strathcluyd Britons (an extensive district composed of the south western extremity of Scotland, and the north western of England; see Caledonia, b. 2, c. 2, Vol. 1, p. 237), the appropriate land of the Picts, where the British people remained long unmixed. In proof of this, he enumerates various grants, from the close of the twelfth century to the year 1610, by which were conveyed, among other matters, the *mercheta mulierum* or *de filiabus*.

Voltaire, in his "Dictionnaire Philosophique," art. "Cuissage ou Culage."—"Droit de Prélibation, de Marquette," &c. says "Il est étonnant que dans l'Europe chrétienne on ait fait très-long-tems une espèce de loi féodale, et que du moins on ait regardé comme un droit coutumier, l'usage d'avoir le pucelage de sa vassale. La première nuit des noces de la fille au villain appartenait sans contredit au seigneur." He seems, however, to think that as a law it never had existence, concluding the article with this maxim, "Des lois absurdes, ridicules, barbares, vous en trouverez par-tout; des lois contre les mœurs nulle part."

Herodotus (Melpomene § 168) speaking of the Adyrmachidæ, a people of Africa, inhabiting a district which adjoins to Egypt, says, τῷ βασιλέϊ τῷν ἀφίξεται μάλιστα γυναῖκα ἐκδώσουσι· ἡ δὲ ἂν τῷ βασιλέϊ δοκέῃ γένεται ἐκεῖ τότε διαιτᾶσθαι.

I extract the following passage on this subject from a publication intituled, "The Beauties of England and Wales," by the Rev. J. Evans, vol. 17, part 1, p. 769.

"A custom, late retained in this district, serves as a clue to the tone and tenor of the times; and brings conviction from demonstration, that laws, mandates, grants, &c. are a mirror from which is reflected the general cha-